M.P. V. Sundararamier & Co vs The State Of Andhra Pradesh& ... on 11 March, 1958

Equivalent citations: 1958 AIR 468, 1958 SCR 1422

Bench: S.K. Das, A.K. Sarkar

PETITIONER:
M.P. V. SUNDARARAMIER & CO.

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH& ANOTHER(with connected petition

DATE OF JUDGMENT:
11/03/1958

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
BOSE, VIVIAN
DAS, SUDHI RANJAN (CJ)
DAS, S.K.
SARKAR, A.K.

CITATION:
1958 AIR 468 1958 SCR 1422

ACT:
Sales Tax-Inter-State sales--Sale outside State but goods delivered for consumption within State- Competence of States to levy tax-Conditional legislation--Power of Parliament to authorise such taxation-President's Adaptation Order-Scope of--Nature of Retrospective operation-Enactment unconstitutional in Part-Effect -Madras General Sales Tax Act, 1939 (Mad. 9 of 1939), as adapted to Andhra, SS. 2(h), 22-Sales Tax Laws Validation Act, 1956 (7 of 1956), S. 2-Constitution of India, Arts. 246, 286, 301, 372, Sch. VIl, List 1, Entry 42, List 11, Entry 54.

HEADNOTE:
The petitioners were dealers carrying on business in the City of Madras in the sale and purchase of yarn. The dealers in the State of Andhra used to place orders for the purchase of yarn with the petitioners in Madras, where the

contracts were concluded and the goods were delivered ex-godown at Madras and thereafter despatched to the purchasers who would take delivery of them within their State. The present dispute related to sales in which property in the goods sold passed outside the State of

1423

Andhra, but the goods themselves were actually delivered as a result of the sale for consumption within that State. After the coming into force of the Constitution of India the President in the exercise of the powers conferred by Art. 372(2) made Adaptation Orders with reference to the Sales Tax Laws of all the States, and as regards the Madras General Sales Tax Act, 1939, he issued an Amendment inserting a new section, S. 22 in that Act, which was a verbatim reproduction of the Explanation to Art. 286 (i)(a) of the Constitution. Oil July 13, 1954, the Board of Revenue (Commercial Taxes) in the State of Andhra, acting on the decision in The State of Bombay and another v. The United Motors (India) Ltd., and others, [1953] S.C.R. 1069, called upon dealers in the State of Madras to submit returns of their turnover of sales in which goods were delivered in the State of Andhra for consumption. Thereupon they filed the present petitions under Art. 32 Of the Constitution challenging the demand on the grounds, inter alia, that the sales proposed to be taxed were inter-State sales and that they were immune from taxation under Art. 286(2) Of the Constitution. While the petitions were pending the Supreme Court pronounced on September 6, 1955, its judgment in The Be gal Immunity Company Limited v. The State of Bihar and others, [1055] 2 S.C.R. 603, according to which the petitioners were not liable to be taxed. But before final orders were passed on the petitions Parliament passed Sales Tax Laws Validation Act, 1956, S. 2 whereof provided that no law of a State imposing or authorising the imposition of tax on inter-State sales during the period between April 1, 1951, and September 6, 1955, shall be deeme to be invalid or ever to have been invalid merely by reason of the fact that the sales took place in the course of the inter-State trade. That section further provided that taxes levied or collected on such sales during the aforesaid period shall be deemed to have been validly levied or collected. It was the contention of the State of Andhra that by reason of the aforesaid provision it had the right to impose tax on inter-State sales during the aforesaid period. On the other hand the petitioners contended, inter alia, that (I) S. 22 Of the Madras General Sales Tax Laws Validation Act, 1956, which gave validity to laws which imposed a tax, did not authorise the imposition, (2) the Sales Tax Laws Validation Act was ultra vires Art. 286(2), (3) S. 22 of the Madras Act was not a "law of a State" within Art. 286(2) and S. 2 of the impugned Act, (4) the impugned Act only validated levies already made and did not authorise the initiation of fresh proceedings for imposing tax, (5) S. 22 having been

unconstitutional when it was enacted and therefore void, no proceedings could be taken thereunder on the basis of the Validation Act, as the effect of unconstitutionality of the law was to efface it out of the statute book, and (6) the proposed levy was bad as infringing the Rule which provided that the sale of yarn could be taxed only at one point. It was also contended that under the Constitution it was only the Parliament that has the competence to impose tax on inter-State sales and that the Sales Tax Laws Validation Act 1424
was bad in that it gave validity, to the laws of the State to impose the tax :
Held (Sarkar J. dissenting), that S. 22 of the Madras General Sales Tax Act, 1939, did in fact impose a tax on the class of sales covered by the Explanation to Art. 286(1)(a) but that it was conditional on the ban enacted on Art. 286(2) being lifted by law of Parliament as provided therein, and that it was therefore validated by S. 2 of the Sales Tax Laws Validation Act, 1956.
The construction put upon the Explanation to Art. 286(1)(a) of the Constitution in The Bengal Immunity Company case that it merely prohibited the outside States from imposing a tax on the class of sales falling within the Explanation and did not confer on the delivery State any power to impose a tax on such sales has no application to a taxing statute of a State the object of which was primarily to confer power on the State to levy and collect tax.
Section 22 and S. 2(h) of the Madras General Sales Tax Act must be read together as' defining the sales which are taxable under the Act.
Mettur Industries Ltd. v. State of Madras, A.I.R. 1957 Mad. 362, The Mysore Spinning and Manufacturing Co. Ltd. v. Deputy Commercial Tax Officer, Madras, A.I.R. 1957 Mad. 368 and Dial Das v. P. S. Talwalkay, A.I.R. 1957 Bom. 71, approved.
Mathew v. Travancore-Cochin Board of Revenue, A.I.R. 1957 T. C. 300, Cochin Coal Co. Ltd. v. The State of Travancore-Cochin, (1956) 7 Sales Tax Cases 731 and The Government of Andhra v. Nooney Govin arajulu, (1957) 8 Sales Tax Cases 297, disapproved.
Queen v. Burah, (1878) 5 I.A. 178 and In Ye The Delhi Laws Act, 1912, etc. [1951] S.C.R. 747, relied on :
Held (Per S. R. Das, C. J., Venkatarama Aiyar, S. K. Das and Vivian Bose, JJ.) that (i) the Sales Tax Laws Validation Act, 1956, is in substance one lifting the ban on taxation of interState sales and is within the authority conferred on Parliament tinder Art. 2 6(2) and further that under that provision it was competent to Parliament to enact a law with retrospective operation.
Punjab Province v. Daulat Singh, (1946) L.R. 73 I.A. 59, distinguished.
The United Province v. Atiqa Bcgum, [1940] F.C.R. 110,
(2) the Adaptation Order made by the President under Art.

372(2) is valid and is not open to attack on the ground that it goes beyond the limits contemplated by that Article.

(3)the expression " law of a State " in Art. 286(2) and S. 2 of the Sales Tax Laws Validation Act means whatever operates as law in the State, and that S. 22 of the Madras General Sales Tax Act is a law within those enactments.

1425

(4) s. 2 of the Sales Tax Laws Validation Act validates not only the levies already collected but also authorises the imposition of tax on sales falling within the Explanation which had taken place during the period specified in S. 2. The Act is not a temporary Act though its operation is limited to sales taking place within a specified period.

Dial Das v. P. S. Talwalkay, A.I.R. 1937 Bom. 71, in so far as it held that it was not competent to the State to start fresh proceedings for assessment, disapproved.

(5) though S. 22 of the Madras General Sales Tax Act was unconstitutional when enacted the effect of the unconstitutionality was not to efface it out of the statute book. Unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature or because the matter itself being within the competence, its provisions offend some constitutional restrictions. Which a law which is not within the competence of the legislature is a nullity a law on a topic within its competence but repugnant to any constitutional prohibition is only unenforceable. In the latter class of legislation when once the constitutional prohibition is removed the law becomes enforceable without re-enactment. Where an enactment is unconstitutional in part but valid as to the rest, assuming that the two portions are severable, it cannot be held to have been wiped out of the statute book, as admittedly it must remain there for the purpose of enforcement of the valid portion. Moreover in the view that the impugned law is conditional legislation it cannot be held to have become non est.

Behram Khurshed Pesikaka v. The State of Bombay, [1955] I S.C.R. 6I3 and A. V. Fernandez v. State of Kerala, [1957] S.C.R. 837, distinguished.

Bhikaji Narayan Dhakras and others v. The State of Madhya Pradesh and a other, [1955] 2 S.C.R. 589, relied on.

(6) under Entry 42 in List 1, Sch. VII of the Constitution, legislation with respect to inter-State trade and commerce is exclusively within the competence of Parliament. Under Entry 54, List 11, taxes on sale of goods is within the exclusive competence of the State Legislature, and reading the two Entries together Entry 42 must be construed as excluding the power to tax sale of goods. The scheme of the Entries in the Lists is that taxation is regarded as a distinct matter and is separately set out. Entry 42, List 1, must therefore be construed as not including the power to impose tax on inter-State sales.

(7) the proposed imposition does not infringe the rule that

the sales of yarns should be subject to taxation at a single point because the proposed levy is by the State of Andhra and the rule in question prohibits only multiple taxation in the same State.
Per Sarkar J.-The Sales Tax Act does not authorise the taxation of a sale under which goods are delivered in the State of
1426
Andhra but the property in them passes outside that State. The Explanation in S. 22 of the Act only contemplates a State other than Andhra as the State inside which a sale shall be deemed to have taken place. The words " for the purposes of clause (a)(i) " have the same meaning in the Explanation in Art. 286(1) as in the Explanation in S. 22 of the Act, and the present case is not distinguishable from the decision in The Bengal Immunity Company Limited v. The State of Bihar and others, [1955] 2 S.C.R. 603.

JUDGMENT:

ORIGINAL JURISDICTION: Petitions Nos. 220, 222, 240 and 380 to 395 of 1955.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

1957. Dec. 10, 11, 12, 13, 17, 18, 19. 1958. Jan. 7, 8, 9. D. Narsa Raju, Advocate-General for the State of Andhra Pradesh and T. M. Sen, for the respondent. The petitions are premature and incompetent as the facts of each transaction of sale are yet to be investigated and it is not possible to know the character of each sale, nor can it be determined which sales can be and which cannot be taxed by Andhra Pradesh.

[CHIEF JUSTICE. You should be reasonably satisfied that the sales are of such a nature that you can levy tax on them before you issue a notice.

BOSE J. You must state the facts on which you think you can tax the sales.] S. K. DAS J. Your stand is that all transactions could be taxed by the delivery State.] D. Narsa Raju. My State is taxing under the decision of this Court in the United Motors case ([1953]S. C. R. 1069).

[Upon the counsel for the petitioners stating that he would confine his arguments to the imposition of tax on Explanation sales only, which some of the transactions indisputably were, the Court indicated that it would hear the petitions.] K. S. Krishnaswami Iyengar, N. Srinivasan and R. Ganapathy Iyer, for the petitioners. The Andhra (Madras) Act does not seek to tax Explanation sales at all. It talks of " property passing " only and as such Andhra can tax only such sales where property passes in Andhra. See Poppatlal Shah v. State of' Madras, ([1953] S. C. R. 677). Section 22 does not enlarge the definition of sales; it only restricts the power of the State to tax. The explanation to s. 22, like the explanation to Art. 236(1), is merely for the purpose of defining what is an outside sale and not for determining what is an inside sale. See Bengal Immunity Company case ([1955] 2 S. C. R.

603 at

640). The power of the President under Art. 372(2) being merely to bring the State laws into conformity with Art. 286, s. 22, which was introduced by the Presidential Adap- tation Order under Art. 372(2), cannot be construed as permitting the imposition of tax on Explanation sales which was prohibited by Art. 286. If s. 22 was construed to permit such imposition it was unconstitutional, illegal and void and must be deemed to be non est. See Bengal Immunity Company case ([1955] 2 S. C. R. 603 at 667). What did not exist could not be validated.

The Sales Tax Laws (Validation) Act, 1956, was not valid legislation under Art. 286(2). Article 286(2) only empowers Parliament to lift the ban on the imposition of tax on inter-State -ales and after it has lifted the ban the State legislature may impose the tax. Parliament is not competent to impose sales tax; such power is vested only in the State legislatures. Article 286(2) does not give Parliament power to validate or ratify laws of the State legislatures. The power under Art. 286(2) can be exercised only once and finally and fully, not partially. Parliament can only lift the ban as from the day the power is exercised and riot retrospectively. Punjab Province v. Daulat Singh, (73 I. A.

59); Behram Khurshed Pesikaka v. The State of Bombay ([1955] I S. C. R. 613, 654 and 655). The case of Dialdas v. Talwalkar (A. 1. R. 1957 Bom. 71) has been wrongly decided. But even this decision helps the petitioners in so far as it lays down that where tax had neither been collected nor levied the Validation Act did not confer power to assess or levy. The whole policy of the Validation Act was to save the State from disgorging the, tax illegally collected. Both levy and collection must be within the period specified in s. 2 of the, Act. Mettur Industries Ltd. v. The State of Madras (A.

1. R. 1957 Mad. 362) and Mysore Spinning and Manufacturing Co. Ltd. v. Deputy Commercial Tax Officer (A. 1. R. 1957 Mad. 368) are against the petitioners.

R. Ganapathy Iyer followed. Section 22 of the Andhra (Madras) Act did riot enlarge the powers of taxation. Mathew v. Travancore-Cochin Board of Reventue (A. 1. R. 1957 T. C.

300). The validation being for a temporary period which expired on September 6, 1.955, no action can be taken after that date under the validated laws. Kesavan Madhava Menon v. The State of Bombay, ([1951] S. C. R. 228, 234, 235), S. Krishnan v. The State of Madras, ([1951]S. C. R. 62 1, and State of Punjab v. Mohar Singh,[1955] I S. C. R.

893). The tax being a sinole pointtax under the Act, and the petitioners having already paid the tax at the time of the purchase of the yarn from the Mills, no second tax was payable. The Andhra (Madras) Act being a new Act the tax on yarn is hit by the Essential Commodities Act (52 of 1952) read with Art. 286(3) of the Constitution. Petitioners are not dealers in Andhra Pradesh and cannot be assessed. There are no sales in Andhra; all sales being in Madras. V.L. Narasimhamoorthy, J. B. Dadachanji and Rameshtvar Nath, for the Mysore Spinning & Mfg. Co., Ltd., and Minerva Mills Ltd., (Interveners), supported the petitioners. Section 22 does not authorise the imposition of tax on Explanation sales. It could not have been the intention of the President to allow the State to add a

new category of sales - the Explanation Sales -to be taxed. The language of Art. 286(2) indicates that the lifting of the ban is a condition precedent to legislation by the States imposing tax on inter-State sales. Alternatively, the power to tax inter-State sales is with Parliament under Entry 97 of List I of Schedule VII of the Constitution. Section 22 was wiped out and obliterated by the judgment in the Bengal Immunity Company case. See Behram Khurshed Pesikaka v. The State of Bombay, ([1955] 1 S. C. R. 613); Newberry v. United States, (65 L. Ed. 913). The same interpretation must be given to the explanation to s. 22 as has been given to the explanation to Art. 286(1)(a). The non-obstante clause in s. 22 has only the effectof subtracting something from the power to tax andriot of adding to it. Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax ([1955] 2 S.C..R. 483); Aswini Kumar Ghosh v. Arbinda Bose ([1953] S.C.R. 1, 22, 24); A. V. Fernandez v. The State of Kerala, ([1957] S. C. R. 837).

N. A. Palkhiwala, J. B. Dadachanji and Rameshwar Nath, for Tata Iron & Steel Co., Ltd., (Intervener). There must be a factual levy before Parliament can validate it. Section 22(ii) removes inter-State sales from the purview of the Act. Fernandez's case supports this contention. On a proper construction of Art. 286(2), according to the decision in the Bengal Immunity Company case, there was no levy on interState sales and there was nothing for Parliament to lift the ban for. ([1955] 2 S. C. R. 603, 621, 662, 667). There is a vital difference between retrospective and retroactive operation. There is no power in Parliament to validate ex post facto a violation of Art. 286(2). Parliament must first lift the ban and then the State legislation may come imposing tax on inter-State sales. Parliament is competent to prevent what otherwise would have been a violation of the Constitution, but it is not competent to condone an accomplished violation. Section 2 of the Validating Act will operate only where taxes have already been collected or have been finally assessed. P. N. Bhagwati and .1. N. Shroff, for Pashebbhai Patel & Co., Ltd., (Intervener) supported the petitioners. D. Narsa Raju, Advocate-General of Andhra Pradesh and T. M. Sen, for the respondents. Article 372(2) must take regard of the provision of the Constitution to bring the State laws into conformity with which the power of adaptation is to be exercised. That provision is Art. 286. Implicit in Art. 286(1) is the recognition that the delivery State alone may tax. The -President would be acting within his power to enable the delivery State to tax -Such power is in accordance with the provisions of the Constitution. The power of the legislature to bring the laws in accordance with the Constitution is conferred upon the President. Consequently, the explanation to s. 22 can be read along with the definition of sale and it does add to that definition by bringing Explanation sales within it. K. V. Subramania Iyer, D. N. Mukherjee and B. N. Ghosh, for Madura Mills Co., Ltd., (Intervener). The Adaptation Order made by tile President is not 'law of a State' within the meaning of the Validating Act. 'Law of a State' in the Validating Act must mean the same thing as in Art. 286(2). The President exercising power under Art. 372(2) is not controlled by Art. 286; he exercises a power which belongs to the President and not a power on behalf of the State. Section 22 of the Andhra (Madras) Act is not law made by the State Legislature and is not validated by the Validating Act. The power of imposition of sales tax on inter-State sales was taken away from the States. The bail under Art. 286(2) is only in respect of existing laws; there is no power in the States to enact laws imposing tax on interstate sales. The power to impose tax on inter-State sales is within the exclusive domain of Parliament under Entry 42 of List I of the Seventh Schedule of the Constitution and Entry 54 of List 11 must be construed as not including such power. A reference to Art. 301 reinforces this interpretation. The freedom under Art. 301 includes freedom from sales tax. See The Commonwealth v. The State of South Australia,

(38 C. L. R. 408). The Validation Act is not legislation within Entry

42. See Bank of N. S. W. v. The Commonwealth, (76 C. L. R. 1, 381); Robbins v. Taxing District of Shelby County ((1877) 30 L. Ed. 694); McLeod v. Dilworth Co. ((1944) 88 L. Ed. 1304).

C. K. Daphtary, Solicitor-General of India, G. N. Joshi and T. M. Sen, for the Union of India (Intervener). The Sales Tax Laws Validation Act, 1956, is valid legislation tinder Art. 286(2). In effect and in substance the Validation Act is a law which removes the ban imposed by Art. 286(2), and is not really a Validating Act. Article 286(2), in respect of existing laws, merely said that they should not be effective or operative. It did not take away the competency of the legislatures to make laws providing for taxes oil inter-State sales. Such a law may be against the provision of the Constitution, but that does not repeal or obliterate it. It is only in abeyance. See Bhikaji Narain Dhakra,s and others v. The State Of Madhya Pradesh and another, ([1955] 2 S.C.R. 589, 600). Legislative power generally includes the power to legislate retrospectively. There is no limitation in Art. 286(2) as respects retrospective legislation. Parliament could, therefore, lift the ban retrospectively. Section 22 is a piece of conditional legislation. As soon as the ban under Art. 286(2) was lifted by Parliament it came into operation. The Validation Act is not a temporary statute. A temporary statute is one which says that it is to be effective for a particular period. The Validating Act operates even now and is effective, though it is in respect of sales of a particular period. It is open to the States to initiate proceedings now for taxing the Explanation sales made during the period mentioned in s. 2 even though no such proceedings had been taken during that period. Entry 42 of List I which reads: " Inter-State trade and commerce " does not confer any power of taxation on Parliament. In the scheme of our Constitution a general Entry does not include the power of taxation. Taxes, duties, etc., are enumerated in a separate group in Entries 82-92 in List I. V. K. T. Chari, Advocate-General for the State of Madras, B. R. Gopalakrishnan and T. M. Sen for the State of Madras (Intervener). In construing s. 22 of the Andhra (Madras) Act regard must be had to the law as it stood till September 6, 1955, when judgment was delivered in the Bengal Immunity Company case. In view of the decision in the United Motors case ([1953] S. C. R. 1069, 1085, 1086, 1093, 1094), Explanation sales were regarded as 'inside sales' in the delivery State, and the delivery State was entitled to tax sales. The law of a State which imposed tax on Explanation sales would remain on the statute book, in spite of the decision in The Bengal Immunity Company case, but could not be enforced. See Bhikaji Narain Dhakras and others v. The State of Madhya Pradesh and another ([1955] 2 S.C.R. 589); Ulster Transport Authority v. James Brown & Sons Ltd. ((1953) Northern Ireland Reports 79). Section 2 of the Validating Act refers to such a law.

Mahabir Prasad, Advocate-General for the State of Bihar, Rajeshwar Prasad and S. P. Varma, for the State of Bihar (Intervener); G. C. Mathur and C. P. Lal, for the State of Uttar Pradesh (Intervener) supported the respondents and the Union of India.

R. Ganapathy Iyer, for the petitioners, replied. K. V. Subramania Iyer, for Madura Mills Co., Ltd., (Intervener), also replied with the permission of the Court. 1958. March II. The judgment of Das C. J., Venkatarama Aiyar, S. K. Das and Vivian Bose, JJ. was delivered by Venkatarama Aiyar J. Sarkar J. delivered a separate judgment.

VENKATARAMA AIYAR J.-The petitioners are dealers carrying on business in the City of Madras in the sale and purchase of yarn, and they have filed the present applications under Art. 32 of the Constitution for the issue of a writ of prohibition or other appropriate writ restraining the State of Andhra from taking proceedings for imposing tax on certain sales effected by them in favour of merchants who are residing or carrying on business in what is now the State of Andhra Pradesh, on the ground, inter alia, that the said sales were made in the course of inter-State trade, and that no tax could be levied on them by reason of the prohibition contained in Art. 286(2) of the Constitution. The course of dealings between the parties resulting in the above sales has been set out in para. 5 in Petition No. 220 of 1955. It is therein stated that the dealers in Andhra would place orders for the purchase of yarn with the petitioners in Madras, that the contracts would be concluded at Madras, that the goods would be delivered ex-godown at Madras and would thereafter be despatched to the purchasers either by lorries or by rail as might be directed by them, that when the goods were sent by rail, the railway receipts would be taken either in the name of the consignees, and sent to them by post or in the name of the consignor and endorsed to the purchasers and delivered to them in Madras or sent to them by post endorsed in favour of a bank and the purchasers would take delivery of those receipts after payment to the bank. It is said that in all cases price of the goods was paid in Madras.

On the above allegations, it is manifest that the sales mentioned therein are not all of the same kind, and in point of law, the incidents attaching to them might be different. A consideration of the validity of the imposition with reference to the several classes of sales mentioned above would he wholly airy and pointless without a determination of the facts relating to them, which, however, have not been investigated. Counsel for the petitioners, however, concedes that the, dispute in these proceedings is confined to the proposed imposition of tax, in so far as it relates to sales of the character mentioned in the Explanation to Art. 286(1)(a), that is to say, sales in which the property in the goods sold passed outside the State of Andhra but the goods themselves were actually delivered as a result of the sale for consumption within that State. These sales have been referred to in the arguments before us as "Explanation sales ", and it will be convenient to adopt that expression in referring to them in this judgment.

It will be seen that the above sales would all of them have been intrastate, so long as the Andhra State formed part of the composite State of Madras, and questions of the character now agitated before us could not then have arisen. On September 14, 1953, Parliament enacted the Andhra State Act (30 of 1953), whereby a separate State called the State of Andhra was constituted incorporating therein territories which had previously thereto formed part of the State of Madras, and this Act came into force on October 1, 1953. Under s. 53 of the Andhra State Act, the laws in force in the territories in the Andhra State prior to its constitution are to continue to be in force even thereafter, and one of those laws is the Madras General Sales Tax Act (Madras 9 of 1939), hereinafter referred to as the Madras Act. Section 54 of the Andhra State Act conferred on the Government a power to adapt laws for the purpose of facilitating the application of any law previously made, and in exercise of the power conferred by this section, an Adaptation Order was passed on November 12, 1953, whereby the word " Andhra " was substituted for the word "Madras" in the Madras Act. We shall hereafter refer to the Madras Act as continued and applied in the State of Andhra as the Andhra (Madras) Act.

It will be convenient at this stage to refer to the relevant provisions of this Act. The preamble to the Act states that " it is expedient to provide for the levy of a general tax on the sale of goods in the State of Madras". "Sale" is defined in s. 2(h), omitting what is not material, as meaning " every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration." Section 2(i) defines " turnover " as " the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration ". Section 3 is the charging section and provides that every dealer shall pay for each year tax on his total turnover for such year. By the Madras General Sales Tax (Amendment) Act No. 25 of 1947, a new Explanation was added to the definition of " sale ", and it is as follows:

> Explanation 2: " Notwithstanding anything to the contrary in the Indian Sale of (Goods Act, 1930, the sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this Province, wherever the contract of sale or purchase might have been made-
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> (a) if the goods were actually in this Province at the time when the contract of sale or purchase in respect thereof was made, or
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> (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this Province at any time after the contract of sale or purchase in respect thereof was made."

This amendment came into force on January 1, 1948. In Poppatlal Shah v. The State of Madras (1), this Court had to consider the scope of the definition of " sale " in s. 2(h) and of Explanation 2, and it was therein held that though the power to tax a sale was really a power to tax a transaction of sale and a law imposing such tax would be competent if any of the ingredients of sale had taken place within the State, the Madras Act had, by its definition of "

> sale " in s. 2(h) prior to the enactment of Explanation 2, imposed a tax only when the property in the goods passed within the State, and that in respect of sales which had taken place prior to the amendment, the tax would be unauthorised if the property in the goods passed outside the State of Madras. It was also observed that after the amendment came into force, a tax on a sale which came within Explanation 2 would be valid. That was the position in law under the Madras Act prior to the enactment of the Constitution.
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> It is now necessary to refer to the changes effected in the law by the Constitution. Article 286, which is relevant for the present purpose, is as follows:
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> 286(1). " No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-
>
> (a) outside the State; or

(b) in the course of the import, of the goods into, or export of the goods out of, the territory of India. (1) [1953] S.C.R. 677.

Explanation.-For the purposes of Sub-clause (a), -a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase take,,; place in the course of interstate trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of sucli tax is contrary to the provisions of this clause, continue to be levied until the, thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent." Article 372(2) enacts that, " For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

In exercise of the power conferred by this provision, the President made Adaptation Orders with reference to the Sales Tax Laws of all the States, and as regards the Madras Act, he issued on July 2, 1952, the Fourth, Amendment inserting a new section, s. 22 in that Act. It runs as follows:

" Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place-

(a) (i) outside the State of Madras, or

(ii)in the course of import of the goods into the territory of India or of the export of the goods out of such territory, or

(b) except in so far as Parliament may by law otherwise provide, after the 31st March, 1951, in the course of inter-

State trade or commerce, and the provisions of this Act shall be read and construed accordingly.

Explanation:-For the purposes of cl. (a) (i) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

It will be noticed that the Explanation to Art. 286 (1) (a) is reproduced verbatim in s. 22 of the Madras Act. The true meaning and scope of this Explanation came up for consideration before this Court in The State of Bombay and another v. The United Motors India Ltd., and others (1). Therein, it was held by a majority that though the sales falling within the Explanation would, in fact, be in the course of interState trade, they became, by reason of the fiction introduced therein, invested with the character of intra-State sales, and would be liable to be taxed by the State within which the goods were delivered for consumption. Acting on this judgment, the Board of Revenue (Commercial Taxes) Andhra State, issued a (1) [1953] S.C.R. 1069.

notification on July 13, 1954, calling upon dealers to submit returns of their turnover of sales in which goods were delivered in the Andhra State for consumption, and a copy thereof was sent to the Madras Yarn Merchants' Association, of which the petitioners are members. The Association disputed the liability of the Madras dealers to pay any tax in respect of the sales to the Andhra dealers, and after some correspondence, the Andhra State finally issued on June 30, 1955, notices to the petitioners to send their returns of turnover by July 15, 1955, failing which it was stated that assessments would be made on the best judgment basis, and that, further, the dealers would be liable to the penalties prescribed by the law (Vide Annexure H to the petition). Thereupon, the petitionera have filed the present petitions challenging the validity of the demand made by the Andhra State on the ground, inter alia, that the sales proposed to be taxed were inter-State sales, and that they were immune from taxation under Art. 286(2). These petitions were filed on various dates in July and August, 1955.

While they were pending, the question of the true scope of the Explanation to Art. 286 (1) (a) came up again for consideration before this Court in The Bengal Immunity Company Limited v. The State of Bihar and others (1). By its judgment dated September 6, 1955, this Court held, again by a majority, that the sales falling within the Explanation being inter-State in character, could not be taxed by reason of Art. 286(2), unless Parliament lifted the ban, that the Explanation to Art. 286 (1) (a) controlled only that clause and did not limit the operation of Art. 286 (2), and that the law had not been correctly laid down in The United Motors case (2). On the decision in The Bengal Immunity Company case(1) it cannot be doubted that the claim of the Andhra State to tax Explanation sales would be unconstitutional, and indeed, that was admitted by the State in a statement filed on October 21, 1955, wherein it was stated that having regard (1) [1955]2 S.C.R. 603.

(2) [1953] S.C.R. 1069.

to the decision aforesaid, the petitions might be allowed but without costs. Before final orders were passed on the petitions, however, the Sales Tax Validation Ordinance No. III of 1956, was promulgated on January 30, 1956, and that was later replaced by the Sales Tax Laws Validation Act (7 of 1956) and that came into force on March 21, 1956. Section 2 of this Act runs as follows:

> " Notwithstanding any judgment, decree or order of any court no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of interstate trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law."

On February 19, 1957, the Andhra State which had become the State of Andhra Pradesh under s. 3 (1) of the States Reorganisation Act (37 of 1956) filed a fresh statement that by reason of the Validation Act the State was entitled to impose a tax on the Explanation sales, which had taken place during the period between the 1st day of April, 1951, and the 6th day of September, 1955 (which will hereinafter be referred to as the specified period), and that the petitions should therefore be dismissed.

The petitioners challenge the correctness of this position. They contend that the Andhra (Madras) Act does not, in fact, impose a tax oh the Explanation sales, and that, in consequence, the Validation Act can have no effect on it; that the Validation Act is itself unconstitutional and void; that the Act even if valid, does not validate s. 22 of the Andhra (Madras) Act; that it validates only levies and collections of tax already made, and does not authorise the initiation of fresh proceedings for assessment of tax or for realisa- tion of the same; that even if the Act authorised fresh imposition of taxes, that could not be done without further legislation pursuant thereto by the State, and that no action could be taken on the basis of s. 22 of the Andhra (Madras) Act, as, being unconstitutional when enacted, it was for all purposes non est ; that tax on the sale of yarn could under the Act be levied only at a single point and the State of Madras having imposed a tax on the sale of goods now proposed to be taxed, the Andhra State could not impose a tax once again on the sale of the self-same goods, and that, further, the tax on yarn would, so far as the Andhra State is concerned, be bad as being hit by the Essential Commodities Act (52 of 1952), read with Art. 286 (3). It must be mentioned that similar to the Adaptation Order which enacted s. 22 in the Madras Act, there were Adaptation Orders by the President with reference to the Sales Tax Laws in all the States, and provisions similar to s. 22 were enacted therein. As any decision by this Court on the questions raised in the petitions must conclude similar questions under the laws of other States, those States applied for and obtained permission to intervene in these proceedings, and we have heard the Advocates-General of Madras, Uttar Pradesh and Bihar on the questions. As the main point for determination is the vires of the Sales Tax Laws Validation Act (which will hereinafter be referred to

as the impugned Act), the Union of India has intervened, and the learned Solicitor-General has addressed us on the questions relating to the validity of that Act. Certain assessees who are interested in the decision of the above questions also applied for and obtained permission to intervene, and they are the Mysore Spinning and Manufacturing Co., the Minerva Mills, Ltd., the Tata Iron and Steel Co. Ltd., and the Madura Mills Co. Ltd., and counsel appearing for them have, in general, supported the petitioners.

Counsel for the Madura Mills Co. Ltd., raised a further contention different from and inconsistent with the position taken by the petitioners and other inter. veners, and that is that under Entry 42 in List I of the Seventh Schedule to the Constitution, inter-State trade and commerce is the exclusive domain of the Union Legislature, that tax on inter-State sales is comprised therein, that the States have accordingly no power to tax such sales, and that Parliament is not competent to authorise them to impose such a tax, and that, accordingly, the impugned Act is wholly misconceived and inoperative.

On these contentions, the questions that arise for our determination are:

> (I) Whether the Andhra (Madras) Act, in fact, imposes a tax on the class of sales falling within the Explanation to Art. 286 (1) (a);

(II)Whether the impugned Act is ultra vires the ground that it is not authorised by the terms of Art. 286(2); (III) (a) Whether s. 22 of the Andhra (Madras) Act is within the protection of the impugned Act, and (III)(b) Whether the impugned Act validates only levies and collections made during the specified period, or whether it authorises the imposition and collection of taxes on such sales in future;

(IV)Whether s. 22 of the Madras Act was null and void on the ground that it was in contravention of Art. 286 (2), and whether the proceedings sought to be taken thereunder on the strength of the impugned Act are incompetent; (V) Whether tax on inter-State sales is within the exclusive competence of Parliament, and whether the impugned Act is, in consequence, bad as authorising the States to levy tax ;

(VI)Whether the proposed imposition of tax is illegal on the ground that successive sales of yarn are subject under the law to be taxed at only one point, and as the State of Madras has already taxed the present sales, the State of Andhra cannot again levy a tax on them ; and (VII)Whether the proposed imposition of tax on yarn by the Andhra State is hit by the Essential Commodities Act, read with Art. 286(3), and is illegal?

(1):The first question that falls to be determined is whether the Andhra (Madras) Act, in fact, imposes a tax on the Explanation sales. Only if it does that, would the further questions as to the vires and the operation of the impugned Act arise for consideration. We have already referred to the relevant provisions of the Madras Act and to the decision of this Court in Poppatlal Shah v. The State of Madras (1), wherein it was held that under the definition of " sale " in s. 2(h) of that Act and apart from the Explanations to it which are not material for the present discussion, power had been

taken by the Province of Madras to tax only sales in which property in the goods passed inside the State. It must, therefore, be taken that under the Act, as it stood prior to the Constitution, the State of Madras had no power to impose a tax on sales of the kind mentioned in the Explanation to Art. 286 (1)(a). Now, the question is whether the Adaptation Order of the President (Fourth Amendment) dated July 2, 1952, has, by the insertion of s. 22 in the Madras Act, altered the position. The contention of the respondent is that it has, because it has bodily incorporated the Explanation to Art. 286 (1) (a) in the section itself, and as under that Explanation, all sales falling within its ambit would be sales inside the State of Madras, they became taxable as sales within the definition in s. 2 (h) of the Madras Act; and that accordingly under s. 22 of the Andhra (Madras) Act the Explanation sales become taxable by the Andra State as sales within that State.

The petitioners dispute this position, and contend that that is not the true effect of the Explanation, and that properly construed, it does not authorise the in position of any tax which was not leviable under the provisions of the Act, prior to its enactment. It is argued that the object of Art. 286 of the Constitution was merely to impose restrictions on the power which the States had under Entry 54 in List 11 to enact laws imposing tax on sales, and that, in that context, the true scope of the Explanation to Art. 286 (1) (a) was that it merely took away from the State its power to (1) [1953] S.C.R. 677.

tax a sale in which the property passed inside it if the goods were actually delivered under the sale for consumption in another State and not to confer on the delivery State a power to tax such a sale, and that the Explanation in s. 22 which is, word for word, a reproduction of the Explanation to Art. 286 (1) (a) must be construed as having the same import. Reliance is placed in support of this contention on the following observations of this Court in The Bengal Immunity Company case(1) at p. 640:

> " In clause (1) (a) the Constitution makers have placed a ban on the taxing power of the States with respect to sales or purchases which take place outside the State. If the matter had been left there the ban would have been imperfect, for the argument would have still remained as to where a particular -,ale or purchase took place. Does a sale or purchase take place at the place where the contract of sale is made, or where the property in the goods passes or where the goods are delivered ? These questions are answered by the Explanation. That Explanation is 'for the purposes of sub-clause (a)', i.e., for the purpose of explaining which sale or purchase is to be regarded as having taken place outside a State. By saying that a Parti- cular sale or purchase is to be deemed to take in a particular State the Explanation only indicates that such sale or purchase has taken place outside all other States. The Explanation is neither an Exception nor a Proviso but only explains what is an outside sale referred to in sub-clause (a). This it does by creating a fiction. That fiction is only for the purposes of subclause (a) and cannot be extended to any other purpose. It should be limited to its avowed purpose. To say that this Explanation confers legislative power on what for the sake of brevity has been called the delivery State is to use it for a collateral purpose which is not permissible. .Further, it is utterly illogical and untenable to say that article 286 which was introduced in the Constitution to place restrictions on the

legislative powers of the States, by a side wind, as it were, (1) [1955] 2 S.C.R. 603.

gave enlarged legislative powers to the State of delivery by an explanation sandwiched between two restrictions. This construction runs counter to the entire scheme of the article and the explanation and one may see no justification for imputing such indirect and oblique purpose to this article."

Now, the contention of the petitioners is that these observations are decisive of the present controversy, because the same provision expressed in ipsissima verba cannot have one meaning in Art. 286(1) (a) and quite a different one in s. 22 of the Madras Act; and on the construction put by this Court on the Explanation to Art. 286(1) (a), the Explanation to s. 22 of the, Andhra (Madras) Act must be interpreted as prohibiting States other than Andhra from taxing sales under which goods are delivered for consumption outside those States, even though property passed inside them and not as authorising the State of Andhra to tax sales in which goods are delivered therein for consumption , even though property in the goods passed outside that State. It is argued that this conclusion is reinforced by the opening words of s. 22, viz., "Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods". The effect of this, it is said, is to impose a restriction on the power which the State previously possessed, of taxing sales coming within the definition in s. 2 (h) and not to enlarge it. The decision in Government of Andhra v. Nooney Govindarajulu (1) is cited in support of these contentions.

The error in this argument lies in this that it focusses attention exclusively on the terms in which the Explanations are couched in Art. 286(1) (a) and in s. 22 and completely overlooks the fundamental difference in the context and setting of these two enactments. The scope and purpose of Art. 286 have been considered at length in the decisions of this Court in The United Motors case (2) as also in The Bengal Immunity Company case (3), and it is sufficient to briefly recapitulate them. Under Entry 48 in List 11 of the (1) (1957) 8 Sales Tax Cases 297. (2) [1953] S.C.R, 1069. (3) [1955] 2 S.C.R. 603.

Seventh Schedule to the Government of India Act, 1935, the Provincial Legislature had the exclusive competence to enact a law imposing a tax on the sale of goods, and under s. 99 (1), such a law could be made " for the Province or for any part thereof ". In Wallace Brothers & Co. Ltd. v. Income-tax Commissioner (1), the question arose as to the validity of certain provisions of the Indian Income-tax Act, which sought to tax non-resident foreigners in respect of their foreign income. The Indian Legislature had under Entry 54 in List I of the Government of India Act power to enact laws imposing tax on income other than agricultural income, and under s. 99(1) the law could be made " for the whole of :British India or for any part thereof ". It was held by the Privy Council that the requirements of s. 99 were satisfied if there was sufficient territorial connection between the State imposing the tax and the person who was sought to be taxed, and the receipt of income by the assessees in British India furnished sufficient nexus to give validity to the legislation imposing tax on their foreign income. If this doctrine of nexus is applicable to laws imposing tax on sales-and it was applied by this Court to those laws in the United Motors case (2) at p. 1079 and in Poppatlal Shah's case (3) at pp. 682-683-then it would be competent to the State to enact a law imposing a tax on sales not merely when the property in the goods passed within the State but even when it (lid not, if there was sufficient connection between the State and the transaction of sale, such as the presence

of the goods in the State at the date of the agreement, as was held recently by this Court in Tata Iron & Steel Co. Ltd. v. State of Bihar (4). In fact, acting on the nexus theory the Legislatures of the States enacted Sales Tax Laws adopting one or more of the nexi as the basis of taxation. This resulted in multiple taxation, as a consequence of which the free flow of commerce between the States became obstructed and the larger economic interests of the country suffered. It was to repair this mischief that the Constitution, while (1) (1948) L.R. 75 I.A. 86.

(2) [1953] S.C.R. 1069.

(3) [1953] S.C.R. 677.

(4) [1958] S.C.R. 1355.

retaining the power in the States to tax sales under Entry 54 in List II sought to impose certain restrictions on that power in Art. 286. One of those restrictions is contained in Art. 286(1)(a) which prohibits a State from taxing outside sales. The Explanation now under consideration is attached to this provision, and it is in this context, viz., in its setting in an Article, the object of which was to impose fetters on the legislative powers of the States, that this Court observed that though positive in form, it was in substance negative in character, and that its true purpose was not to confer any fresh power of taxation on the State but to restrict the power which it previously had under Entry 54.

These considerations will clearly be in apposite in construing a taxing statute like the Madras Act, the object of which is primarily to confer power on the State to levy and collect tax. When we find in such a statute a provision containing a prohibition followed by an Explanation which is positive in its terms, the true interpretation to be put on it is that while the prohibition is intended to prevent taxation of outside sales on the basis of the nexus doctrine, the Explanation is intended to authorise taxation of sales falling within its purview, subject of course to the other provisions of the Constitution, such as Art. 286 (2). It should be remembered that unlike the Constitution, the law of a State can speak only within its own territories. It cannot operate either to invest another State with a power which it does not possess, or divest it of a power which it does possess under the Constitution. Its mandates can run only within its own borders. That being the position, what purpose would the Explanation serve in s. 22 of the Madras Act, if it merely meant that when goods are delivered under a contract of sale for consumption in the State of Madras, the outside State in which property in the goods passes has no power to tax the sale ? That is not the concern of the State of Madras, and indeed, the Legislature of Madras would be incompetent to enact such a law. In its context and setting, therefore, the Explanation to s. 22 must mean that it authorises the State of Madras to impose a tax on sales falling within its purview. Thus, while in the context of Art. 286 (1) (a) the Explanation thereto could be construed as purely negative in character though positive in form, it cannot be so construed in its setting in s. 22 of the Madras Act, where it must have a positive content.

Nor is there much force in the contention that the non- obstante clause in s. 22 has only the effect of substracting something from the power to tax conferred on the State by the charging section, s. 3,

read with s. 2 (h) and not of adding to it. In Aswini Kumar Ghosh and another v. Arabinda Bose and another (1), It was observed by this Court that "

> the enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously ". Now, as the Explanation lays down in clear and unambiguous terms that the sales of the character mentioned therein are to be deemed to have taken place inside the State in which goods are delivered for consumption, full effect must be given to it, and its operation cannot be cut down by reference to the non- obstante clause. It cannot be put against this construction that it renders the non-obstante clause ineffective and useless. According to the definition in s. 2 (h), a sale in which property passes inside the State of Madras will be liable to be taxed, even though the goods are delivered for consumption outside that State, but under the Explanation such a sale will be deemed to have taken place in the out- side State in which goods are delivered for consumption, and therefore the State of Madras will have nO power to tax it:
>
> The purpose which the non-obstante clause serves is to render the Explanation effective against the definition in s. 2 (h) and not to render it ineffective in its own sphere, as determined on its terms.
>
> But it is contended that in order to reach this result it was necessary that the Explanation to s. 22 should have been made a part of the definition of " sale " under s. 2 (h), because under s. 3, which is the charging (1) [1953] S.C.R. 1, 24.

section, it is the turnover of sales that is subject to tax, that sale for the purpose of that section is only what is defined as " sale " under s. 2 (h), and that the Explanation sales not having been brought within that definition, no charge could be imposed thereon. The Explanation in s. 22, it is argued, cannot override s. 2 (h), and if its object was to confer on the State a power to tax sales falling within its ambit, that has not, in fact, been achieved. It is pointed out by way of contrast that in the Sales Tax Laws of some other States, such as Bihar and Uttar Pradesh, the Explanation has been added to the definition of sale. Now, a contention that what the Legislature intended to bring about it has failed to do by reason of defective draftsmanship is one which can only be accepted in the last resort, when there is no avenue left for escape from that conclusion. But that clearly is not the position here. Section 22 opens with the words " Nothing contained in this Act ", and that means that that section is to be read as controlling, inter alia, the definition of sale in s. 2 (h). Otherwise, sales in which property passes in Madras but delivery is outside that State would be taxable under s. 2

(h) and under s. 3, even though they are within the prohibition enacted in s. 22. If the provisions of s. 22 are effective for the purpose of limiting the operation of s. 2 (h), we do not see any difficulty in construing the Explanation therein as equally effective for the purpose of enlarging it. Again, it is a rule of construction well- establisbed that the several sections forming part of a statute should be read, unless there are compelling reasons contra, as constituting a single scheme and construed in such manner as would give effect to all of them. On this principle, s. 2 (h) and s. 22 must be read

together as defining what are sales, which are taxable under the Act and what are not, and so read, the Explanation really means that in sales in which goods are delivered for consumption in the State of Madras, the property therein shall be deemed to have passed inside that State, notwithstanding that it has, under the Sale of Goods Act, passed outside that State. On this construction, those sales will fall within the definition in s. 2 (h) and will be taxable. The contention of the petitioners highly technical and based oil the non-insertion of the Explanation in s. 2 (h) must, in our opinion, be rejected as unsound.

It is next contended that the power of the President under Art,. 372 (2) is merely to bring the provisions of the State laws into conformity with Art. 286, and that having regard to the interpretation put on that Article in The Bengal Immunity Company case (1), the Explanation in s. 22 would be valid in so far as it prohibits the State of Madras from imposing a tax on sales in which goods are delivered outside Madras, though property therein passed inside that State, but that in so far as it makes taxable sales in which property passes outside the State of Madras but the goods themselves are delivered for consumption in Madras, it is much more than bringing the. ,State law into conformity with Art. 286, and is, in consequence, unauthorised and bad. It is argued that such a provision could be enacted by the Legislature of Madras, as was in fact, done by the legis- latures of many of the States, but the President could not do it in exercise of the special and limited power conferred on him by Art. 372(2). That power is merely, it is contended, to take the definition of " sale " in s. 2(h) of the Madras Act, strike out therefrom whatever is repugnant to Art. 286, such as sales in which goods are delivered for consumption outside Madras, and leave it there and not to add to it.

We are not satisfied that that is a correct view to take of the powers of the President under Art. 372(2). It is to be observed that Art. 286(1)(a) and the Explanation thereto form, in their setting in a taxing statute, integral parts of and different facets of the same concept. Sales in which property passes outside the State of Madras but delivery for consumption is inside Madras are at once inside sales for Madras and outside sales for the other States. Now, if in exercise of the power to adapt, the enactment of the Explanation is requisite to give effect to one aspect of that (1) [1955] 2 S.C.R. 603.

concept, that is, for prohibiting the State of Madras from taxing sales when goods are delivered outside, we fail to see why it should not operate to give effect to the other aspect of the concept which is so integrally connected with it, viz., taxing of sales in which goods are delivered for consumption in the State of Madras, if its language is comprehensive and wide enough to include such sales. We find it difficult to hold that the self-same Explanation is intra vires the powers of the President in so far as it prohibits the State from taxing gales, in which goods are delivered Outside the State but is ultra vires in so far as it authorises that State to tax sales in which goods are delivered inside it.

It should be remembered in this connection that the power which the President has under Art. 372(2) to adapt is the legislative power of the State whose law is adapted, and that includes the power to repeal and amend any provision. Provided that the law as adapted is within the legislative competence of the State and its enactment is in the process of bringing the State law into conformity with Art. 286, it seems to us that it is within the ambit of the power con- ferred by Art. 372(2). The question, however, is of academic interest, because of the concluding words of Art. 372(2), which

enact that no adaptation order made under that provision shall be liable to be questioned. It was suggested for the -petitioners that these words would have no application when the adaptation order went beyond the terms of Art. 372(2), and that it was open to them to challenge its validity on the ground that it amounted to more than bringing the existing law into conformity with Art. 286. We are unable to agree. If the adaptation order is within the scope of Art. 372(2), then it is valid of its own force, and does not require the aid of a clause such as is contained in the concluding portions thereof. It is only when the adaptation amounts to something more than merely bringing the State law into conformity with the Constitutional provisions that there can arise a need for such a clause. In our opinion, the effect of the concluding words of Art. 372(2) is to render the question of the validity of the adaptation non- justiciable. The Adaptation Order in question must, accordingly, be held to be not open to attack on the ground that it goes beyond the limits contemplated by Art. 372(2). It is then argued that even though the Adaptation Order of the President might not be open to question even if it had imposed for the first time a tax on sales which had not been previously imposed by the Act, nevertheless in deciding whether it does, in fact, impose such a tax, it would be relevant to take into account that the object of Art. 372(2) was only to bring the State laws into conformity with the Constitution, and that, in consequence, the Explanation in s. 22 must be construed as having the same meaning as the Explanation in Art. 286(1)(a). This would, no doubt, be a legitimate consideration in interpreting the language of the Explanation, but then, it must be remembered that at the time when the Adaptation Order was made, the true interpretation of the Explanation to Art. 286(1)(a) had not been the subjectmatter of any decision, and it is therefore difficult to impute to the framers of s. 22 the construction put by this Court on the Explanation to Art. 286(1)(a) in The Bengal Immunity Company case (1) any more than the one put on it in The United Motors case (2). We are therefore thrown back on the language of the Explanation itself to discover its true scope. If, in enacting the Explanation, the Adaptation Order merely intended to prohibit the State of Madras from imposing tax on sales under which goods are delivered for consumption outside that State even though property therein passed inside that State, it would clearly have expressed that intention in words to the following effect: " For the purposes of clause (a)(i), a sale under which goods are delivered for consumption outside the State of Madras shall be deemed to have taken place outside that State, notwithstanding that property in those goods passed inside that State ". But the language of the Explanation is general, and fixes the situs of sales of (1) [1955] 2 S.C.R. 603.

(2) [1953] S.C.R. 1069.

an inter-State character in the State in which goods are actually delivered for consumption. Under this Explanation, a sale under which goods are delivered outside the State of Madras will be an outside sale for that State even though property in the goods passed inside that State, and likewise, a sale under which goods are delivered inside the State of Madras will be an inside sale for that State, even though property in the goods passed outside that State. As the language of the Explanation is general and of sufficient amplitude not merely to restrict but also to add to the power of the State to tax Explanation sales, and as the reasons for construing it as purely restrictive in Art. 286(1)(a) are, as already stated, without force in their application to a taxing statute, we must give full effect to the words of the enactment, and bold that they operate to confer on the State a power to tax Explanation sales. There is one other contention relating to this aspect of the matter, which remains to be

considered, and that is that even if the Explanation could be construed as authorising the imposition of a tax on the sales mentioned therein, a reading of the section as a whole makes it clear that, in fact, no such tax was imposed, as it expressly enacts that "Nothing contained in this Act shall be deemed to impose a tax on inter-State sales ". The argument is that the Explanation sales being inter-State sales and the section having exempted them from taxation, they go out of the statute book altogether, and do not exist for the purpose of the impugned Act. We are unable to agree with this contention. Article 286(2) consists of two parts, one imposing a restriction on the power possessed by the States to tax sales under Entry 54 in so far as such sales are in the course of inter-State trade and commerce and another, vesting in Parliament a power to enact a law removing that restriction. If s. 22 had merely enacted that portion of Art. 286(2) which prohibited imposition of taxes on interstate sales, that might have furnished some plausible ground for the contention now urged by the petitioners.:but it enacts both the parts of Art. 286(2), the restriction imposed therein and also the condition on which that restriction is to cease, viz., Parliament providing otherwise by law. Taken along with the admitted power of the States to impose tax on sales under Entry 54, the true scope of s. 22 is that it does impose a tax on the Explanation sales, but the imposition is to take effect only when Parliament lifts the ban. In other words, it is a piece of legislation imposing tax in praesenti but with a condition annexed that it is to come into force in futuro as and when Parliament so provides. It is not contended that there is in the Constitution any inhibition against conditional legislation. In The Queen v. Burah (1), it was held by the Privy Council that a legislature acting within the ambit of authority conferred on it by the Constitution has the power to enact a law either absolutely or conditionally, and that position has been repeatedly affirmed in this Court. Vide In The Delhi Laws Act, 1912, etc. (2) and Sardar Inder Singh v. State of Rajasthan(3). It would clearly be within the competence of the Madras Legislature to enact a law imposing a tax on sales conditional on the ban enacted in Art. 286(2) being lifted by Parliamentary legislation, and that, in our opinion, is all that has been done in s. 22. The Madras Act defines the event on which the tax becomes payable and the person from whom and the rate at which it has to be levied, and forms a complete code on the topic under consideration. It could have no immediate operation by reason of the bar imposed by Art. 286(2), but when once that is removed by a law of Parliament, there is no impediment to its being enforced. That satisfies all the requirements of a conditional legislation. But it was argued that s. 22 of the Madras Act could not be so construed, because it was not open to the President acting in exercise of the power conferred on him under Art. 372 (2) to impose a conditional levy ; nor would it be competent to the Legislature of Madras to make a levy conditional or otherwise, unless Parliament had authorised it. We see no force in this argument. As (1) (1878) L.R. 5 I.A. 178. (2) [1951] S.C.R. 747. (3) [1957] S.C.R. 605.

Art. 286(2) is itself in two parts, one a restriction on the power of the State and the other, a condition on which such restriction will cease to operate, an adaptation made pursuant thereto must also be similar in its contents. Nor is there in Art. 286 (2) any prohibition of any legislation by tile State Legislature against enacting laws imposing tax on interstate sales. It merely enacts that such law can have no effect. The words "No law of a State shall impose "

mean only that no such law shall be effective to impose a tax.

It is also contended that under the Sales Tax Acts, the levy of tax is annual and the rules contemplate submission of quarterly returns and payment of taxes every quarter on the admitted turnover, and that a conditional legislation under which payment of tax will become enforceable in futuro would be inconsistent with the scheme of the Act and the rules. But this argument, when examined, comes to no more than this that the existing rules do not provide a machinery for the levy and the collection of taxes which might become payable in future, when Parliament lifts the ban. Assuming that that is the true position, that does not affect the factum of the imposition, which is the only point with which we are now concerned. That the States will have to frame rules for realizing the tax which becomes now payable is not a ground for holding that there is, in fact, no imposition of tax. It should also be mentioned in this connection that the Madras Act makes a clear distinction between sales which are outside the operation of the Act, and sales which are within its operation but are exempt from taxation. Section 4 provides that the provisions of the Act shall not apply to the sale of electrical energy, motor spirit, manufactured tobacco and certain other articles. In contrast to this is the language of s. 22, which expressly enacts that the Act shall not be deemed to impose a tax on inter-State sales, except in so far as Parliament may by law otherwise provide. We are of opinion that, on the true construction of s. 22 of the Act, there is an imposition of tax on Explanation sales but that it could be enforced only when Parliament so provides.

We have so far considered the question on principle and on the language of the statute. We may now.,. refer to the decisions of the High Courts, wherein this question has been considered. In Mettur Industries Ltd. v. State of Madras (1), the point directly arose for decision as to whether s.

22 of the Madras Act did. in fact, levy a tax on the Explanation sales so as to fall within the protection of the Sales Tax Laws Validation Act. It was held that the Explanation to s. 22 had' the effect of rendering the sale one inside the State so as to fall within the definition of that word in s. 2 (h), and that it was taxable. Next in point of time is the decision of the Bombay High Court in Dial Das v. P. S. Talwalkar (2) in which the question arose with reference to s. 46 of the Bombay Sales Tax Act (Bom. III of 1953), corresponding to s. 22 of the Madras Act. It was held that it did impose a tax, though it was to operate only if Parliament so provided. Then, there are two decisions of the Travancore-Cochin High Court, Mathew v. Travancore-Cochin Board of Revenue(3) and Cochin Coal Co., Ltd. v. State Of Travancore-Cochin(4), in which it was held that s. 26 of the Travancore-Cochin General Sales Tax Act corresponding to s. 22 of the Madras Act, had not the effect of imposing, of its own force, a tax on the Explanation sales, and the decision in Mettur Industries Ltd. v. Madras State (supra) was not followed. In The -Mysore Spinning and Manufacturing Co., Ltd. v. Deputy Commercial Tax Officer, Madras (5) the Madras High Court re-affirmed the view which it had taken in Mettur Industries Ltd. v. State of Madras (supra), and held that s. 22 had the effect of imposing a tax on the Explanation sales. In The Government of Andhra v. Nooney Govindarajulu (supra), the true effect of s. 22 of the Madras Act came up for consideration before the Andhra High Court, and it was held therein, dffering from Mettur Industries Ltd. v. State of Madras (1) and Dial Das v. P. S. Talwalkar (2) that in view of the

observations of this Court as to the scope of the (1) A.I.R. 1957 Mad. 362.

(2) A.I.R. 1957 Bom. 71.

(3) A.I.R. 1957 T.C. 300.

(4) (1956) 7 Sales Tax Cases 731.

(5) A.I.R. 1957 Mad. 368.

Explanation in Art. 286 (1) (a), the Explanation in s. 22 could not be construed as imposing a tax on the sales mentioned therein, and that that conclusion also followed on the opening words of the section that " Nothing contained in this Act shall be deemed to impose, or authorise the impo- sition of a tax..... For the reasons already given, we are unable to agree with the decisions in Mathew v. Travancore-Cochin Board of Revenue(1), Cochin Coal Co. Ltd. v. State of Travancore-Cochin(2) and The Government of Andhra v. Nooney Govindarajulu (3). We are of opinion that the law has been correctly laid down in Mettur Industries Ltd. v. State of Madras (4) and Dial Das v. P. S. Talwalkar (5). We accordingly hold that s. 22 operated to impose a tax falling within the Explanation, subject to authorisation by Parliament as provided in Art. 286 (2). In this view, the contention urged on behalf of the States that the Explanation to Art. 286 (1) (a), being a provision of the Constitution, operated by its own force to impose a tax on the sales covered by it, and did not require to be supplemented by any State legislation to become effective, does not call for any detailed consideration. Suffice it to say that it cannot be maintained if the true scope of Art. 286 is to define and limit the powers of State Legislatures with reference to imposition of sales tax and not to itself impose it.

(11) That brings us on to the next question which is whether the impugned Act, Sales Tax Laws Validation Act, is ultra vires on the ground that it is not authorised by the terms of Art. 286 (2). Now, it is a well-known rule of interpretation that in order to understand the true nature and scope of an Act it is necessary to ascertain what the evils were which were intended to be redressed by it. The starting point of the trouble which ultimately led to the enactment of the impugned Act is the Explanation to Art. 286(1)(a), which came into force on January 26, 1950. The terms in which it is worded undoubtedly suggest that sales (1) A.I. R. 1957 T.C. 300.

(2) (1956) 7 Sales Tax Cases 731.

(3) (1957) 8 Sales Tax Cases 297.

(4) A.I.R. 1957 Mad. 362.

(5) A.I.R. 1957 Bom. 71.

of the description mentioned therein are to be treated as sales inside the delivery State for purposes of taxation. That is how it would seem to have been understood in the Adaptation Order under

which s. 22 was inserted in the Madras Sales Tax Act and in the Adaptation Orders relating to the Sales Tax Laws of other States; for, as already stated, in a taxing statute the language of the Explanation can only mean that a sale failing within its purview is an inside sale enabling the State to tax it. In The United Motors case (1), the construction put by this Court on the Explanation was that though but for it the sales mentioned therein would be in the course of interState trade and commerce, its effect was to convert them into intrastate sales, so as to bring them within the taxing power of the delivery State. It was only later that this Court held finally in The Bengal Immunity Company case (2) that the Explanation sales were not divested of their character as inter-State sales as the Explanation to Art. 286 (1) (a) did not govern Art. 286 (2), and that in the absence of Parliamentary legislation as contemplated by Art. 286 (2), taxation of sales falling within its purview would be unconstitutional. This judgment was delivered on September 6, 1955.

But acting on the apparent tenor and import of the Explanation and the construction put upon it in The United Motors case (1), the States in India had been levying taxes oil the sales falling within its purview. The position on September 6, 1955, was that the States had imposed and collected large amounts by way of tax on Explanation sales; that there were proceedings pending for assessment of tax on such sales; and that apart from this, the States would have been entitled to take, but for the decision in The Bengal Immunity Company case (2), proceedings for the assessment of tax in respect of those sales. Now, the result of the decision in The Bengal Immunity Company case (2) was that the levy of the tax on the Explanation sales became unauthorised and the States were faced with large claims for restitution of the (1) [1953] S.C.R. 1069.

(2) [1955] 2 S.C.R. 603.

amounts realised, involving threat to their economic stability. It should also be mentioned that quite a large number of dealers had, acting under provisions of the Sales Tax Acts which empowered them to pass the tax on, collected it from their purchasers for the purpose of payment to the State, and as after the decision in The Bengal Immunity Company case (1) they could no longer be called upon to pay it, they stood to make an unjust gain of it.

These were the evils which called for redress, and it was to remedy them that Parliament enacted the Sales Tax Validation Ordinance No. III of 1956, and eventually replaced it by the impugned Act. Section 2 of the Act provides that no law of a State imposing a tax on sales which took place in the course of interState trade or commerce between April 1, 1951, and September 6, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sales were in the course of inter-State trade. The section further provides that all taxes levied or collected under such a law during the specified period shall be deemed to have been validly levied or collected. The policy behind the Act is obviously to declare the law as interpreted in The United Motors case (2) as the law governing sales filling within the Explanation up to the date of the judgment in The Bengal Immunity Company case(1) and to give effect to the law as laid down in that decision for the sales effected subsequent thereto. The question is whether this Act is unconstitutional as being ultra vires the powers of Parliament tinder Art' 286 (2). The petitioners maintain that it is, and put forward several grounds in support of that position. It is firstly contended by them that under Entry 54 in List II, the power to make laws in respect of tax on sales is vested exclusively in the States, that the

power which is conferred on Parliament under Art. 286(2) is only to enact a law directing or permitting the States to impose a tax on inter- States sales and not to itself enact a law with reference thereto that the impugned Act being one to validate Sales (1) [1955] 2 S.C.R. 603.

(2) [1953] S.C.R. 1069.

Tax Laws is substantive in character and is not authorised by the terms of Art. 286 (2) and is, in consequence, unconstitutional. It is argued that to validate is to confirm or ratify, and that can be only in respect of acts which one could have himself performed, and that if Parliament cannot enact a law relating to sales tax, it cannot validate such a law either, and that such a law is accordingly unauthorised and void. The only basis for this contention in the Act is its description in the Short Title as the " Sales Tax Laws Validation Act " and the marginal note to s. 2, which is similarly worded. But the true nature of a law has to be determined not on the label given to it in the statute but on its substance. Section 2 of the impugned Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on them by Art. 286 (2) and to enable such laws to operate on their own terms. The true scope of the impugned Act is, to adopt the language of this Court in the decisions in The United Motors case (1) and The Bengal Immunity Company case (2), that it lifts the ban imposed on the States against taxing inter-State sales and not that it validates or ratifies any such law. Considering the legislation on its substance, we have .no doubt that it is within the scope of the authority conferred on Parliament by Art. 286 (2) and is not ultra vires.

It is next contended that the impugned Act is wholly retrospective in character in that it operates on sales which took place during the specified period, and that such a legislation is, having regard to the intendment of Art. 286 (2), outside its terms. It is argued that this Article, to start with, enacts a restriction on the power of the State to impose taxes on inter-State sales and then vests in Parliament a power (1) [1933] S.C.R. 1069.

(2) [1955] 2 S.C.R. 603.

to remove that restriction, and that in logical sequence therefore, there should first be a legislation by Parliament authorising the States to impose a tax on interState sales and then a law of the State made in accordance therewith, and that that order having been reversed in the present case, the impugned Act is unconstitutional. We do not agree with this contention. Article 286 (2) merely provides that no law of a State shall impose tax on inter-State sales "

> except in so far as Parliament may by law otherwise provide ". It places no restrictions on the nature of the law to be passed by Parliament. On the other hand, the words " in so far as " clearly leave it to Parliament to decide oil the form and nature of the law to be enacted by it. What is material to observe is that the power conferred on Parliament under Art. 286 (2) is a legislative power, and such a power conferred on a Sovereign Legislature carries with it authority to enact a law either

prospectively or retrospectively, unless there can be found in the Constitution itself a limitation on that power. Now, there is nothing express in Art. 286 (2) imposing a restriction on the power of Parliament to enact a law with retrospective operation. But it is argued for the petitioners that such a restriction is to be implied from the scheme of it, which is that there is a prohibition on the power of the State to enact a law imposing tax on inter-State sales, unless Parliament lifts the ban, and it is said that a prohibition operates only in futuro and therefore a law removing that prohibition must also operate in futuro. The decision of the Privy Council in Punjab Province v. . Daulat Singh (1) is relied on in support of this proposition. There, the question arose with reference to the validity of a mortgage of agricultural lands in the Punjab executed in the year 1933. Section 13-A of the Punjab Alienation of Land Act which came into force in 1939 enacted that transfer of a land by a member of an agricultural tribe in favour of another member of the tribe was void if the transferee was a benamidar for a person who was not a member of that tribe, whether such transfer was (1) (1946) L.R. 73 I.A. 59.

made before or after the Act. The mortgagee instituted a suit, challenging the vires of this section on the ground that it contravened s. 298(1) of the Government of India Act, 1935, which provided that no subject of His Majesty domiciled in India shall be prohibited from acquiring, holding or disposing of property on grounds only of religion, place of birth or descent. The mortgagor in reply relied on s. 298 (2) which enacted that nothing in that section shall affect the operation of any law which prohibits the sale or mortgage of agricultural land situate in any particular area and owned by a person belonging to the agriculturist class. In rejecting this contention, the Privy Council observed that what was saved by s. 298 (2) was a law prohibiting certain kinds of transfers, that the word " prohibition " could properly apply only to acts to be done in futuro, and that the impugned provision, s. 13-A, was intra vires the Constitutional provision in so far as it prohibited transfers after the date of its enactment, but to the extent that it avoided transfers which had taken place prior to that date, it was ultra vires. This decision proceeded solely on the connotation of the word " prohibits " in s. 298 (2) of the Government of India Act, and can be of no assistance in the construction of Art. 286 (2), wherein that word does not occur. And even on the substance of it, we see no real analogy between the case in Punjab Province v. Daulat Singh (1) and the present. There, the law which was authorised by s. 298 (2) was one prohibiting certain transfers; here the law which Parliament is authorised to make is one not prohibiting the States from imposing tax on inter-State sales, but permitting them to do so. While a law prohibiting transfers must be prospective, a law authorising imposition of tax need not be. It can be both prospective and retrospective.

A decision more directly in point is the one in The United Provinces v. Atiqa Begum(2). There, the question arose on the construction of s. 292 of the Government of India Act, 1935, which enacted that, " Notwithstanding the repeal by this Act of the (1) (1946) I. R. 73 I. A. 59.

(2) [1940] F. C. R. 110.

Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British

India until altered or repealed or amended by a competent Legislature or other competent authority."

The Legislature of the United Provinces had enacted a law modifying the pre-existing law relating to the payment of rents by tenants to landlords and giving it retrospective operation. The question was whether the enactment was repugnant to s. 292 which had provided that the preexisting law was to continue in force until it was altered. It was held that the power of a legislature to pass a law included a power to pass it retrospectively, and that the words of s. 292 did not operate to impose any restriction on that power, and that the legislation was intra vires. In our opinion, the principle of this decision is applicable to the present case, and the impugned Act cannot be held to be bad on the ground that it is retrospective in operation. It is next contended that the impugned Act is ultra vires, inasmuch as it is much more than a mere retrospective law, and that it is really a piece of ex post facto legislation, which is not authorised by Art. 286(2). The argument in support of this contention may thus be stated : A' State legislature is competent under Entry 54 in List II to enact a law taxing sale of goods, and when such a law is made to operate retrospectively it may not be open to challenge on constitutional grounds, though its propriety may be open to question on grounds of policy. Parliament has no competence to enact laws in respect of tax on sales filling within Entry 54 in List 11, but Art. 286(2) confers on it a power to authorise the States to impose a tax on inter-State sales. The impugned Act does not do that, but validates ex post facto laws of States imposing such a tax retrospectively for the specified period. Such a general law may be intra vires the States but not Parliament, nor is it one which can be justified by the power granted to it to " provide otherwise." It is therefore unconstitutional and void, In our opinion, this argument is only an amalgam of the two contentions already dealt with, and does not require further detailed consideration. The impugned Act, though it is in name a validating Act, is in essence a law lifting the ban under Art. 286 (2), and if no limitation on the character of that law could be spelt out of the language of that Article, then it must be upheld as within the authority conferred by it.

It is also argued that even if the power to make a law conferred on Parliament under Art. 286 (2) comprehends a power to enact a law with retrospective operation, that power cannot extend to authorising what is unconstitutional, and that as s. 22 of the, Madras Act and the corresponding provisions in the statutes of other States were unconstitutional and illegal when made as contravening the prohibition enacted in Art. 286 (2), the impugned Act must be held to be unauthorised and bad in that it seeks to give effect to those provisions. But this is to beg the very question which we have to decide. If it is competent to the legislatures of the States to enact a law imposing a tax on inter-State sales to take effect when Parliament so provides, there is nothing unconstitutional or illegal either in s. 22 of the Madras Act or in the corresponding provisions in the Acts of other States. If conditional legislation is valid, as we have held it is, then s. 22 is clearly intra vires, and the foundation on which this contention of the petitioners rests, disappears and it must fall to the ground. In the result, we are of opinion that the impugned Act is intra vires, and is not open to challenge on any of the grounds put forward by the petitioners.

(111) (a). We have now to consider the contention that even if the impugned Act is valid, that would not give efficacy to s. 22 of the Madras Act or the corresponding provisions in the laws of other States which came in by adaptation under Art. 372 (2). The ground urged in support of this

contention is that the expression " law of a State "

> in Art. 286 (2) has a technical import, and means a law which is enacted by the legislature of a State in the manner prescribed by the Constitution and open to challenge in courts if it is unconstitutional, that that expression occurring ,-in s. 2 of the impugned Act must bear the same meaning which it has in Art. 286 (2) as it was enacted, pursuant to the authority contained therein, and that s. 22 of the Madras Act is not a law of that description, as it was made by the President in exercise, of the special power conferred on him by Art. 372 (2), and is, as provided therein, not open to attack in a court of law.
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> We do not see why we should restrict the connotation of the words " law of a State " in the manner contended above. The law of a State signifies, in its ordinary acceptation, whatever is an expression of the legislative, as distinguished from the executive or judicial power of a State. Its normal mode under the Constitution is no doubt that it is enacted by the legislature of the State constituted in accordance with the procedure prescribed therein. But that is not the only mode in which the legislative power of the State could be exercised. Under Art. 213, the Governor is authorised, subject to the conditions laid down therein, to issue Ordinances which have the force of law, and these Ordinances are clearly laws of the State and not the less so by reason of their not having been passed by the State legislature. Under Art. 252, it is open to Parliament acting on resolutions of the legislatures of two or more States, to enact laws on subjects which are within the exclusive competence of the States, a recent instance of such legislation being Act 42 of 1955, the validity of which was the subject of consideration in R. M. D. Charnarbaugwalla v. Union of India(1). Can it, be contended that these are not laws of the States for which they were enacted, because they were not passed by the legislatures of those States ? We entertain no doubt that by the expression " law of a State " in Art. 286 (2) and s. 2 of the impugned Act is meant whatever operates as law in the state, and that s. 22 of the Madras Act is a law within those enactments. Nor does it affect this conclusion that that law may not be open to challenge in a court of law. A right to challenge a (1) [1957] S.C.R. 930.

law must depend on the provisions of the Constitution governing the matter, and if those provisions enact that it is not open to question in a court of law or' that it is liable to be questioned only on certain specified grounds, that will not have the effect of depriving a statute duly enacted of its character as law. We are also not satisfied that a law as adapted under Art. 372 (2) is not open to attack on the ground that it contravenes some constitutional provision. We are disposed to think that the concluding words of Art. 372 (2) preclude an attack on the Adaptation Order only on the ground that it does more than merely bringing the State law into conformity with the Constitution and is, in consequence, ultra vires the powers conferred by that article. In the result, we must hold that s. 22 of the Madras Act is within the protection afforded by s. 2 of the impugned Act.

(111) (b) : The next contention of the petitioners that falls to be considered is whether even on the footing that the impugned Act is intra vires the powers of Parliament under Art. 286 (2), the

proceedings which are proposed to be taken by the State of Andhra against them for assessment of tax are incompetent, because the Act validates only levies or collections made during the specified period but does not authorise the initiation of fresh proceedings for levy or collection of tax. It is contended that though s. 2 of the impugned Act consists of two clauses, one giving effect to laws of States imposing tax on inter-State sales in so far as they took place during the specified period and the other validating levy or collection of tax made during that period, the first clause has no independent operation, the only purpose which it serves being to lead up to the second which is the only effective clause in the section. It is argued that if the intention of the legislature was not merely to validate the levies or collections already made but also to maintain the laws in force so as to enable the States to take fresh proceedings for assessment and levy of tax, then there was no need whatsoever for the second clause, as effectuation of the Act would automatically validate the levies and collections made thereunder. It is said that the object of the legislation was only to see that the States had not to refund amounts collected by them, and that for achieving that object it was necessary only to give effect to the second clause. The decision in Dialdas v. P. S. Talwalkar (1) already cited, was relied on as supporting the petitioners on this point.

In our judgment, the language of the enactment is too clear and unambiguous to admit of this contention. If the purpose of the enactment is what the petitioners contend it to be, then nothing would have been easier for the legislature than to have so framed the section as to confine its operation to levies or collections already made, without giving effect to the law itself. On the contention of the petitioners, the first clause has to be discarded as wholly inoperative, and we should be 10th to adopt a construction which leads to that result. It is true that on the contention of the State that the first clause has independent operation the second clause would be unnecessary, as even without it, the result sought to be achieved by it must follow on the first clause itself. But it is to be noted that the first clause has reference to the exercise of legislative power while the second is concerned with administrative action, and it is possible that the second clause might have been enacted by way of abundant caution. It is nothing strange or unusual for a legislature to insert a provision ex abundanti cautela, so as to disarm possible objection; but it is in- conceivable that it should enact a provision which is wholly inoperative. Of two alternative constructions of which one leads to the former and the other involves the latter result, there cannot be any question that it is the former that is to be preferred. Nor is it permissible to cut down the plain meaning of the terms of the statute on considera- tions of policy behind the legislation. But even from that point of view, there was the fact that there were dealers who had collected taxes from their purchasers for payment to the State, but were relieved of (1) A.I.R. 1957 Bom. 71.

that obligation by the judgment in The Bengal Immunity Company case (1) and that, further, to validate only levies and collections made would give an advantage to those who evaded the law as then understood, over those who loyally obeyed it. It follows that we are unable to agree with the decision in Dialdas v. P. S. Talwalkar (2), in so far as it held that it was not competent to the State to start fresh proceedings for assessment of tax on the strength of the impugned Act. In our opinion, the true construction of s. 2 is that the two clauses therein are, as indicated by the conjunction, distinct and independent in their opera. tion, and that the laws of the States are kept in force in respect of sales which had taken place during the specified period, and that proceedings in respect thereof for assessment are within the protection of the Act.

It was next argued that the impugned Act is a temporary statute, as its operation is limited to sales which took place during the specified period, and that period having expired, no proceedings could now be taken on the strength of the provisions of that Act, and reliance was placed on the observations of this Court in Keshavan Madhava Menon v. The State of Bombay (3), in support of this position. But the impugned Act is in no sense a temporary Act. Its life is not limited to any specified period. It is a permanent statute operating on all sales which took place during the specified period. The fallacy in this contention of the petitioners lies in mixing up the period, the sales during which are brought within the operation of the Act, with the period of the operation of the Act itself. The former may be said to be temporary, but the latter clearly is not. (IV) It is next contended that even if the impugned Act authorised starting of fresh proceedings for assessment of tax on the Explanation sales which had taken place during the specified period, no action in that behalf could be taken under s. 22 of the (1) [1955] 2 S.C.R. 603. (2) A.I.R. 1957 Bom. 71. (3) [1951] S.C.R. 228, 235.

Andhra (Madras) Act, because it was, when it was enacted, repugnant to Art. 286(2) of the Constitution, and was therefore void. It is argued that a statute which is unconstitutional is a nullity and must be treated as non est and that the impugned Act could not infuse life into it. It may be open, it is said, to the Legislature of the State of Andhra to enact a fresh law giving it even retrospective operation as provided in the impugned Act, but in the absence of such a legislation, the provisions of the Act as they stood prior to the impugned Act are incapable of enforcement. It would be sufficient answer to this contention that s. 22 of the Madras Act is only a piece of conditional legislation, imposing tax on interState sales when Parliament should enact a law lifting the ban, and if such legislation is competent as we have held it is, then no question of unconstitutionality of the section when it was enacted could arise. But it would be more satisfactory to decide the point on its own merits, as the question raised has been, of late, the subject of considerable discussion in this Court.

Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to re- member that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature, or because the matter itself being within its competence, its provisions offend some constitutional restrictions. In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State on an Entry in List 1, Sch. VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes ? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the

legislature is a nullity, a law on a topic within its competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unen. forceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment.

Willoughby on the Constitution of the United States, Vol. 1, at p. 11 says :

> " The validity of a statute is to be tested by the constitutional power of a legislature at the time of its enactment by that legislature, and, if thus tested it is beyond the legislative power, it is not rendered valid, without re-enactment, if later, by constitutional amendment, the necessary legislative power is granted. However, it has been held that where an act is within the general legislative power of the enacting body, but is rendered unconstitutional by reason of some adventitious circumstance, as for example, when a State legislature is prevented from regulating a matter by reason of the fact that the Federal Congress has already legislated upon that matter, or by reason of its silence is to be construed as indicating that there should be no regulation, tile act does not need to be re-enacted in order to be enforced, if this cause of its unconstitutionality is removed."

In Cooley on Constitutional Law at p. 201, it is stated that " a finding of unconstitutionality does not destroy the statute but merely involves a refusal to enforce it". In Wilkerson v. Rahrer (1), the State of Kansas had enacted a law in 1889 forbidding the sale of intoxicating liquor. This was bad in so far as it related to sales in the course of interstate trade, as it was in contravention of the Commerce Clause. But in 1890, the Congress passed a law conferring authority on the States to enact prohibition laws. The question was whether a prosecution under the law of 1889 in respect of a breach of that law subsequent to the Congress legislation in 1890 was maintainable. Repelling the contention that the statute of 1889 was a nullity when it was passed and could not be enforced without reenactment, the Court observed:

> " This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the Act of Congress. That Act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the state law was required before it could have the effect upon imported which it had always had upon domestic property."

It should be noted that in this case the law of 1889 applied to intrastate sales also, and it was admittedly valid to that extent. The impugned legislation was therefore unconstitutional only in part. Rottschafer after referring to the conflict of authorities on 'this question in the States, refers to

the decision in Wilkerson v. Rahrer (1) as embodying the better view. Vide American Constitutional Law, 1939 Edn. p. 39.

A similar view was taken in Ulster Transport (1) (1891) I40 U.S. 545; 35 L. Ed. 572.

Authority v. James Brown & Sons Ltd. (1). There, construing s. 5(1) of the Act of 1920 which enacts that " any law made in contravention of the restrictions imposed by this sub- section shall so far as it contravenes these restrictions, be void ", Lord MacDermott L. C. J. observed:

> " I am not aware of any authority for the view that language such as this necessarily means that contravention must produce an actual gap in the statute book in the sense that the measure concerned, or some specific part thereof, simply drops out of the authorized text. As well as this vertical severability, if I may so describe it, I see no reason why, if the circumstances warrant such a course, the terms of section 5(1) should not be sufficiently met by what I may call a horizontal severance, a severance that is which, without excising any of the text, removes from its ambit some particular subject-matter, activity or application. This, I think, would give effect to the words ' so far as it contravenes' without impinging on the meaning or weight to be attached to the word ' void '. "

It will be noted that this decision also deals with a statute which was in part unconstitutional. Coming to the authorities of this Court where this question has been considered: In Behram Khurshed Pesikaka v. The State of Bombay (2) the question arose with reference to the Bombay Prohibition Act of 1949 which, subject to certain exceptions provided therein, prohibited the consumption of liquor. In The State of Bombay and another v. F. N. Balsara (3) this Court had held that this provision was obnoxious to Art. 19(1)(g) of the Constitution in so far as it related to medicinal and toilet preparations containing alcohol. The appellant was prosecuted for the offence of consuming liquor, and his defence was that he had taken medicine containing alcohol. The point in dispute was whether the burden was upon the appellant to prove that he had taken such a medicine or for the prosecution to show that he had not. This (1) (1953) Northern Ireland Reports 79.

(2) [1955] 1 S. C. R. 613, 654. (3) [1951] S. C. R. 682.

Court held that the onus was on the prosecution, and the same not having been discharged, the appellant was entitled to be acquitted. In the course of the judgment, Mahajan C. J. made the following observations, which are relied on by the petitioners:

> " The constitutional invalidity of a part of section 13(b) of the Bombay Prohibition Act having been declared by this Court, that part of the section ceased to have any legal effect in judging cases of citizens arid had to be regarded as null and void in determining whether a citizen was guilty of an offence."

It must be observed that the question of the constitu- tionality of the Act did not arise directly for deter- mination and was incidentally discussed as bearing on the incidence of burden of proof. And further, these observations have reference to the enforceability of the provisions of the Bombay Prohibition Act, while the bar under Art. 19 continued to operate. There was no question of the lifting of ban imposed by Art. 19, 'and the question as to the effect of lifting of a ban did not arise for decision. In the context in which they occur, the words "

> null and void " cannot be construed as implying that the impugned law must be regarded as non est so as to be incapable of taking effect, when the bar is removed. They mean nothing more than that the Act is unenforceable by reason of the bar.
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> In A. V. Fernandez v. State of Kerala (1) the question arose with reference to the Travancore-Cochin General Sales Tax Act and the Rules made thereunder. Prior to the Constitution, the assessees were liable to pay tax on the total turnover of sales including those inside the State and those outside the State. Where the sales were of cocoanut oil, there was a provision for deduction of the price paid for the purchase of copra from the total turnover. After the coming into force of the Constitution, a new section, s. 26, corresponding to s. 22 of the Madras Act, was introduced incorporating therein the provisions of Art. 286, and consequent thereon, the sales which took place outside the State were excluded from the turnover. On this, (1) [1957] S. C. R. 837.

a question arose as to the quantum of deduction to which the assessee was entitled in respect of his purchase of copra. He claimed that he was entitled to deduct the price paid for copra not only in respect of oil which was sold inside the State but also oil sold outside the State. This contention was rejected by the High Court, which limited the deduction to purchase of copra relating to the sales inside' the State, and in affirming that decision, this Court observed :

> " In our opinion, section 26 of the Act, in cases falling within the categories specified under Article 286 of the Constitution has the effect of setting at nought and of obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods and in particular the provisions contained in the charging section and the provisions contained in rule 20(2) and other provisions which are incidental to the process of levying such tax. So far as sales falling within the categories specified in Article 286 of the Constitution and the corresponding section 26 of the Act are concerned, they are, as it were, taken out of the purview of the Act and no effect is to be given to those provisions which would otherwise have been applicable if section 26 had not been added to the Act. "

On the strength of the above observations, the petitioners contend that the provisions relating to inter-State sales must be treated as non-existent, and that, therefore, a fresh enactment of the statute would be necessary to bring them into operation. Here again, the point for decision was only as to the effect of the ban under Art. 286 on the transactions which came within its purview. That ban had not then been lifted and the effect of the lifting of such a ban on the existing law did not fall

to be considered. We are unable to read the observations relied on by the petitioners as implying that s. 22 of the Madras Act must be taken to have been blotted out of the statute book. A case directly in point is Bhikaji Narayan Dhakras and others v. The State of Madhya Pradesh and another (1). There, the question arose with reference (1) [1955] 2 S. C. R. 589.

to the C. P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act 3 of 1948). That Act had amended s. 43 of the Motor Vehicles Act, 1939, by introducing provisions which authorised the Provincial Government " to take up the entire motor transport business in the Province and run it in competition with and even to the exclusion of motor transport operators ". These provisions, though valid at the time when they were enacted, became void on the coming into force of the Constitution as infringing the rights of citizens to carry on business, protected by Art. 19(1)(g). The Constitution, however, was amended on June 18,1951, and Art. 19(6) was amended so as to authorise the State to carry on business " to the exclusion, complete or partial, of citizens or otherwise ". Subsequent to this amendment, the Government issued a notification under s. 43 of the Amendment Act of 1948, and it was the validity of that notification that was in issue. The contention was that as s. 43 of the Act of 1948 had become void at the date of the Constitution, a notification issued by the Government under that section after the date of the amendment of the Consti- tution was not valid, as it must be taken to have become non est. It was held by this Court that s. 43 of the Act of 1948 could not be held to have been effaced out of the statute book, because it continued to operate on transactions prior to the coming into force of the Constitution, and that even after the Constitution, it would be operative as against non-citizens, that the consequence of s. 43 being repugnant to Art. 19(1)(g) was that it could not be enforced so long as the prohibition contained therein was in force, but that when once that prohibition had been removed as it was by the First Amendment, the provisions of that Act which had been dormant all the time became active and enforceable.

The result of the authorities may thus be summed up: Where an enactment is unconstitutional in part but valid as to the rest, assuming of course that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground that it is unconstitutional will operate proprio vigore when the Constitutional bar is removed, and there is no need for a fresh legislation to give effect thereto. On this view, the contention of the petitioners with reference to the Explanation in s. 22 of the Madras Act must fail. That Explanation operates, as already stated, on two classes of transactions. It renders taxation of sales in which the property in the goods passes in Madras but delivery takes place outside Madras illegal on the ground that they are outside sales falling within Art. 286(1) (a). It also authorises the imposition of tax on the sales in which the property in the goods passes outside Madras but goods are delivered for consumption within Madras. It is valid in so far as it prohibits tax on outside sales, but invalid in so far as sales in which goods are delivered inside the State are concerned, because such sales are bit by Art. 286(2). The fact that it is invalid as to a part has not the effect of obliterating it out of the statute book, because it is valid as to a part and has to remain in the statute book for being enforced as to that part. The result of the enactment of the impugned Act is to lift the ban under Art. 286(2), and the consequence of it is that that portion of the Explanation which relates to sales in which property paws outside Madras but the goods are delivered inside Madras and which was unenforceable before, became valid and enforceable. In this view, we do not

feel called upon to express any opinion as to whether it would make any difference in the result if the impugned provision was unconstitutional in its entirety.

There is one other aspect of the question to which reference must be made. The decisions in Behram Khurshed Pesikaka v. The State of Bombay (1) and Bhikaji Narain Dhakras and others v. The State of Madhya Pradesh and another (2) both turn on the construction of Art. 13 of the Constitution, which enacts that laws shall be void to the extent they are (1) [1955] 1 S.C.R. 613. 187 (2) [1955] 2 S.C.R. 589, repugnant to the provisions of Part III. We are concerned in these petitions not with infringement of any of the provisions of Part III but of Art. 286(2), and the point for our decision is as to the effect of the infringement of that provision. Art. 286(2) does not provide that a law which contravenes it is void, and when regard is had to the context of that provision, it is difficult to draw the inference that that is the consequence of contravention of that provision. Art. 372(1) provides for the continuance in force of all laws existing at the date of the Constitution. The proviso to Art. 286(2) enacts that the President may by an order continue the operation of the Sales Tax Laws up to March 31, 1951, and Art. 286(2) itself enacts that no law of a State shall impose a tax. In the context in which they occur, the true meaning to be given to these words is, as already observed, that no law of a State shall be effective to impose a tax; that is to say, the law cannot be enforced in so far as it imposes such a tax. Whether we consider the question on broad principles as to the effect of un-constitutionality of a statute or on the language of Art. 286(2), the conclusion is inescapable that s. 22 of the Madras Act and the corresponding provisions in the other statutes cannot be held to be null and void and non est by reason of their being, repugnant to Art. 286(2) and the bar under that Article having been now removed, there is no legal impediment to effect being given to them. (V) We shall now deal with the contention of the learned counsel for the Madura Mills Ltd., who struck a new path cutting across the lines on which the petitioners and the other interveners proceeded. He contended that the decisive factor in the determination of the question was Entry 42 in List I of the Seventh Schedule, "Inter-State trade and commerce", that under that Entry, Parliament had the exclusive power to enact laws in respect of inter-State trade and commerce and that included power to impose a tax on inter-State sales, that the States had therefore no competence under the Constitution to enact a law imposing tax on such sales, that the laws passed by the States after the Constitution imposing such a tax were ultra vires and void, that the impugned Act purporting to give effect to such laws was likewise ultra vires and inoperative, and that, in consequence, the proceedings sought to be taken under s. 22 of the Madras Act and the corresponding provisions in the sister Acts of other States were unauthorised and illegal. The argument in support of this contention was as follows: Entry 42 in List I is based on the Commerce Clause of the American Constitution, Art. 1, s. 8 that " The Congress shall have power to regulate commerce among the several States ", and that has been interpreted by the Supreme Court of the United States as meaning that the States have no power to enact a law imposing a tax on the carrying on of inter-State trade (Vide Robins v. Taxing District of Shelby County (1), or imposing tax on inter-State sales (Vide McLeod v. Dilworth Co. (2)). The contents of Entry 42 are the same as those of the Commerce Clause, and it must therefore be construed as of the same effect. It is also a well-established rule of construction that the Entries in the Legislative Lists must be interpreted liberally and in a wide sense. The true interpretation therefore to be put upon Entry 42 is that Parliament has, and therefore, in view of the non-obstante clause in Art. 246(1) and of the words "subject to" in Art. 246(3), the States have not, the power to impose tax on inter-State sales. Article

301 which provides that trade and commerce in the territory of India shall be free is also intended to achieve the same result. It reproduces s. 92 of the Commonwealth of Australia Constitution Act, and the authorities on that section have held that imposition of a tax on inter-State trade would be obnoxious to that provision. That the freedom in Art. 301 includes freedom from taxation is also implicit in Art. 304 (a) in which an exception to Art. 301 is made in respect of the imposition of tax on goods imported from other States. The result is, it is argued, that after the Constitution no law of a State can impose a tax on (1) (1887) 120 U.S. 489; 30 L. Ed. 694.

(2) (1044) 322 U.S. 327 ; 88 L. Ed. 1304.

inter-State sales, and in consequence, s. 22 of the Madras Act, which came into force after the Constitution, would, if it is construed as imposing a tax, be bad, and the impugned Act which proceeds on the view that the States have the power to enact laws imposing a tax on inter-State sales and seeks to give effect to them would also be unconstitutional and void.

This contention suffers, in our opinion, from serious infirmities. It overlooks that our Constitution was not written on a tabula rasa, that a Federal Constitution had been established under the Government of India Act, 1935, and though that has undergone considerable change by way of repeal, modification and addition, it still remains the framework on which the present Constitution is built, and that the provisions of the Constitution must accordingly be read in the light of the provisions of the Government of India Act. It fails to give due weight to the setting of the relevant provisions of the Constitution and the interpretation which is to be put upon them in their context. In the Government of India Act, 1935, there was no Entry corresponding to Entry 42 in List I of the Constitu- tion. But there was in List II, Entry 48 which corresponds to Entry 54 in the Constitution. It is not in dispute that under Entry 48 the States had power to pass a law imposing a tax on inter-State sales, because the terms of the Entry are wide and would include inter-State as well as intrastate sales. It was on this view that the Provinces had enacted laws imposing tax on inter-State sales. Then the Constitu- tion came into force, and it included for the first time a new Entry 42 in List 1. It also reproduced Entry 48 in Entry 54 in List II in terms, for our -purposes, identical. Having regard to the connotation of that Entry in the Government of India Act, 1935, one would have expected that if it was intended by the Constitution-makers that the States should be deprived of the power to tax interstate sales which they had under Entry 48 in the Government of India Act, that would have been made clear in the Entry itself. It is material to note that while Entry 48 in the Government of India Act was "Taxes on the sale of goods and on advertisement ", Entry 54 in List II of the Constitution as originally enacted was " Taxes on the' sale or purchase of goods other than newspapers". Thus, the Constitution did limit the scope of Entry 48 by excluding from it newspapers, and if it was its intention to exclude inter-State sales from its purview, nothing would have been easier for it than to have said so, instead of leaving that result to be inferred on a construction of Entry 42 in List I in the light of the American authorities on the Commerce Clause. This Is strong indication that Entry 42 is not to be read as including tax on inter-State sales. This conclusion is further strengthened, when regard is had to the scheme of the Lists in the Seventh Schedule and the principle underlying the enumeration of heads of legislation therein. In List 1, Entries I to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of

these two groups of Entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "

> Railways ", and Entry 89 is " Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights ". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers ". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is " Duties of customs including export duties " would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and winding up of corporations. Entry 85 provides separately for Corporation tax. Turning to List II, Entries I to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is " Land " and Entry 45 is "

Land revenue ". Entry 23 is " Regulation of mines " and Entry 50 is " Taxes on mineral rights ". The above analysis- and it is not exhaustive of the Entries in the Lists-leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Art. 248, Cls. (1) and (2), and of Entry 97 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce.

Article 286 has a direct bearing on the point now under discussion. It imposes various restrictions on the power of the State to enact laws imposing taxes on sale of goods and one of those restrictions has reference to taxes on inter- State sales, vide Art. 286(2). It is implicit in this provision that it is the States that have got the power to impose a tax on such sales, as there can be no question of a restriction on what does not exist. That is how Art. 286(2) has been construed by this Court both in The United Motors case (1) and in The Bengal Immunity Company case (2). It was observed therein that under Entry 54, as under Entry 48 of the Government of India Act, the power to tax sales rested with the States, and that Art. 286(2) was enacted with the object of avoiding multiple taxation of inter-State sales in exercise of the power conferred by that Entry. This again strongly supports the conclusion that Entry 54 must be interpreted as including the power to tax inter- State sales and Entry 42 as excluding it.

In order to get over this hurdle, learned counsel put forward the contention that Art. 286(2) had reference only to laws which were in existence at the time when the Constitution came into force, and that the (1) [1953] S.C.R. 1069.

(2) [1955] 2 S.C.R. 603.

power given to Parliament was one to continue those laws. Reference was made to the proviso to Art. 286(2) which authorised the President to direct that the taxes which were being levied by the State before the commencement of the Constitution might be continued to be levied until March 31, 1951, and it was said that the power conferred under Art. 286(2) was of the same character, and that it merely enabled Parliament to continue pre-Constitution laws. Now, it cannot be disputed that the language of Art. 286(2) would, in terms, comprehend future legislation. Language similar to the one used in Art. 286 (2) is also to be found in Art. 287, and there, it clearly has reference to laws to be enacted after the Constitution. Indeed, it was conceded that on the wording of Art. 286(2) both existing and future legislation would be included. But it was contended that its operation should be limited to existing laws, because as Entry 42 in List I includes tax on inter-State sales, any law of the State subsequent to the Constitution imposing such a tax would be incompetent. This, however, is petitio principii. The point for decision is whether tax on inter- State sales is included within Entry 42. The inference to be drawn from the plain language of Art. 286(2) is that it is not. It is no answer to this to say that Entry 42 includes it, and that, therefore, the meaning of Art. 286(2) should be cut down. We cannot accede to such a contention. To sum up: (1) Entry 54 is successor to Entry 48 in the Government of India Act, and it would be legitimate to construe it as including tax on interState sales, unless there is anything repugnant to it in the Constitution, and there is none such. (2) Under the scheme of the Entries in the Lists, taxation is regarded as a distinct matter and is separately set out. (3) Article 286(2) proceeds on the basis that it is the States that have the power to enact laws imposing tax on inter-State Sales. it is a fair inference to draw from these considerations that under Entry 54 in List 11 the States are competent to enact laws imposing tax on inter-State sales.

We must now consider the arguments that have been put forward as supporting the opposite conclusion. It is firstly contended that the Entries in the Legislative Lists must be construed broadly and not narrowly or in a pedantic manner, and that, in accordance with this principle, Entry 42 should be construed, there being no limitation contained therein, as inclusive of the power to tax sales in inter-State trade and commerce. The rule of construction relied on is no doubt well-established; but the question is as to the application of that rule in the present case. The question here is not simpliciter whether a particular piece of legislation falls within an Entry or not. The point in dispute before us is whether between two Entries assigned to two different Legislatures the particular subject of legislation falls within the ambit of the one or the other. If Entry 42 in List I is to be construed liberally, so must Entry 54 in List II be, and the point is not settled by reference to Art. 246, Cls. (1) and (3) and to the principle laid down in Union Colliery Company of British Columbia v. Bryden (1) that where there is a conflict of jurisdiction between a Central and a Provincial Legislature, it is the law of the Centre that must prevail. Art. 246, Cls. (1) and (3) have to be invoked only if there is a conflict as to the scope of two Entries in the two Lists and not otherwise. What has therefore first to be decided is whether there is any conflict between Entry 42 in List I and Entry 54 in List 11. If there is not, the application of the non-obstante clause in Art. 246(1) or of the words " subject to " in Art. 246(3) does not arise. There is another rule of construction also wellsettled that the Entries in two Legislative Lists must be construed if possible so as to avoid a conflict. In Province of Madras v. Boddu Paidanna and Sons (2) the question was as to whether the first sales by a manufacturer of goods were liable to be taxed by the Province under Entry 48 in List II, or whether it was really a tax on excise which was within the exclusive competence of the Centre under Entry 45 in List 1. It was held by the Federal Court that the (1) [1899] A. C. 580.

(2) [1942] F.C.R. 90.

correct approach to the question was to see whether it was possible to effect a reconciliation between the two Entries so as to avoid a conflict and overlapping,' and that, in that view, though excise duty might in a extended sense cover the first sales by the manufacturer, in the context of entry 48 in List II it should be held not to include it, and that therefore the Province had the right to tax the first sales. This view was approved by the Privy Council in GovernorGeneral in Council v. Province of Madras (1). If it is possible therefore to construe Entry 42 as not including tax on interstate sales, then on the principle enunciated in Province of Madras v. Boddu Paidanna and Sons (2) and Governor-General in Council v. Province of Madras (1) we should so construe it, as that will avoid a conflict between the two Entries.

It was also argued in support of the contention that Entry 42 in List I must be held to include the power to tax, that that was the interpretation put by the American authorities on the Commerce Clause, and that there was no reason why a different construction ,should be put on Entry 42 in list I of our Constitution. It is true that our Constitution- makers bad before them the Commerce Clause and the authorities thereon, but it is a mistake to suppose that they intended to bodily transplant that clause in Entry 42. We had in the Government of India Act, 1935, a fullfledged Federal Constitution in force in this Country, and what the Constitution-makers did was to draw from other Federal Constitutions of the world, adapt and modify the provisions so as to sent our conditions and fit them in our Constitution. In this new context, those provisions do not necessarily mean what they meant in their old setting. The threads were no doubt taken from other Constitutions, but when they were woven into the fabric of our Constitution, their reach and their complexion underwent changes. Therefore, valuable as the American decisions are as showing how the question is dealt with in a sister (1) (1945) L.R. 72 I.A. 91.

(2) [1942] F.C.R. 90.

Federal Constitution, great care should be taken in applying them in the interpretation of our Constitution. We should not forget that it is our Constitution that we are to interpret, and that interpretation must depend on the context and setting of the particular provision which has to be interpreted. Applying these principles and having regard to the features already set out, we must hold that Entry 42 in List I is not to be interpreted as including taxation. The same remarks apply to the argument based upon s. 92 of the Commonwealth of Australia Constitution Act and Art. 301 of 'our Constitution. We should also add that Art. 304 (a) of the Constitution cannot be interpreted as throwing any light on. the scope of Art. 301 with reference to the question of taxation, as it merely reproduces s. 297 (1) (b) of the Government of --India Act, and as there was no provision therein corresponding to Art. 301, s. 297 (1)(b) could not have implied what is now sought to be inferred from Art. 304 (a).

In the result, we are of opinion that if the States had the power under Entry 54 to impose a tax on inter- State sales subject only to the restriction enacted in Art. 286 (2), then by virtue of the impugned Act such law is rendered operative and proceedings taken thereunder are valid. We have reached this conclusion on a construction of the statutory provisions bearing on the question

without reference to the Sixth Amendment of the Constitution which, proceeding on the view that the States had the power to tax interState sales under Entry 54, has amended the Constitu- tion, and has vested the power to tax interstate sales in the Centre.

(VI) Another contention urged by the petitioners is that the levy of tax proposed to be made by the Andhra State on the sale of yarn by them to dealers in the State of Andhra is illegal, because under the Madras Act and the Rules made thereunder, where there are successive sales of yarn the tax can be imposed at only one point, and as the Government of Madras had already imposed a tax on the sale within that State, a second levy on the self-same goods by the State of Andhra is unauthorised. and that therefore the threatened proceedings for assessment are incompetent. This contention is clearly untenable. When the Madras Act provides for a single levy on successive sales of yarn, it can have only application to sales in the State of Madras, as it would be incompetent to the Legislature of Madras to enact a law to operate in another State. But it is argued that s. 53 of the Andhra State Act, 1953, on its true interpretation enacts that though for political purposes Andhra is to be regarded as a separate State, for the enforcement of laws as they stood on that date it should be deemed to be a part of the State of Madras. We do not agree with this interpretation. In our opinion, s. 53 merely provides that the laws in existence in the territories which were constituted into the State of Andhra should continue to, operate as before. In fact, by an Adaptation Order issued on November 12, 1953, even the name of Andhra was substituted for Madrts in the Madras General Sales Tax Act. There is no substance in this contention.

(VII) Lastly, it is argued that the Essential Commodities Act enacted by Parliament in exercise of the power conferred by Art. 286 (3) has declared that yarn is an essential commodity, and that if the Madras Act is to be construed as a fresh enactment for the Andhra State by reason of ss. 53 and 54 of the Andhra State Act and the Adaptation Order dated November 12, 1953, then it would be bad inasmuch as the procedure prescribed in that provision had not been followed. The basis of this contention is that the Madras Act as applied to the Andhra State is a now Act for purposes of Art. 286 (3), but that is not so. The Madras Act was in force in the territories which now form part of the Andhra State until October 1, 1953, and thereafter that Act continues to be in operation by force of s. 53 of the Andhra State Act. Moreover, the Madras Act become operative in the new State of Andhra not under any law passed by the Legislature of the State of Andhra but under s. 53 of a law enacted by Parliament and therefore Art. 286 (3) has no application. We should add that the Essential Commodities Act (LII of 1952) has itself been repealed and is no longer in operation. This contention of the petitioners also should be rejected. The petitioners sought to raise certain other contentions such as that they are not "dealers" in the Andhra State, and that the Explanation to s. 22 had no application to the sales sought to be taxed, as the goods were delivered not in the State of Andhra but in Madras. But these are questions which ought properly to be raised before the assessing authorities, and cannot be gone into in these proceedings. In the result, the petitions fail and are rejected. The petitions have had a chequered career, their fortures fluctuating with changes in the interpretation of the law and in the law itself. In the circumstances, we direct the parties to bear their own costs.

SARKAR J.-The petitioners who are dealers in cotton yarn carrying on business in the city of Madras had sold goods to various persons in the State of Andhra. This State, the respondent in these

petitions, demanded taxes on these sales under the provisions of the Sales Tax Act applying to its territories. The petitioners challenged the respondents right to tax the, sales, and filed these petitions for writs of prohibition or other suitable writs restraining the respondent from levying and collecting the tax. The Act mentioned various kinds of sales which could be taxed under it. The procedures followed by the petitioners in effecting the sales were diverse and have not yet been ascertained, and it is not possible without such ascertainment to decide whether they are or are not taxable under the provisions of the Act read with other relevant laws. To avoid this difficulty it has been agreed between the parties that the only question that will be decided on these petitions is whether the respondent can tax a sale under which the pro- perty in the goods sold passed outside the State of Andhra but the goods were delivered in that State for consumption there. Before proceeding to discuss this question it is necessary to refer to certain antecedent events.

On January 26, 1950, the Constitution of India was promulgated. It continued the laws previously in force in the territories of India subject to its provisions. Article 372(2) of the Constitution provides that, "For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient."

Article 286 of the Constitution as it stood prior to its amendment in 1956, that being what this case is concerned with, contained the following provisions :

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

Explanation.-For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consump- tion in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament my by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase talks place in the course of inter-State trade or commerce : "

> In the year 1939 the legislature of Madras had enacted the Madras General Sales Tax Act and this was continued in force by the Constitution after its promulgation. In order to bring its provisions into accord with the Constitution, the President under his power mentioned earlier, passed on July 2, 1952, the Adaptation of Laws(Fourth

Amendment) Order which added a new section to the Madras Act, being s. 22. The terms of this section are important in this case and will be set out later.

The effect of the Explanation in Art. 286(1)(a) came up for consideration by this Court in the case of The State of Bombay v. The United Motors (India) Ltd. (1). This Court held by its judgment pronounced by a majority, on March 30, 1953, that a State 'could tax a sale under which goods were delivered within its territories for consumption there though the property in the goods passed beyond its territories and a provision in a State statute purporting to levy such a tax did not contravene Art. 286. Andhra is a new State which came into existence on October 1, 1953. It was created by the Andhra State Act, 1953, largely out of territories previously belonging to the State of Madras. Later, the new State came to be designated as the State of Andhra Pradesh but I will refer to it as the State of Andhra or simply Andhra. Section 53 of the Andhra State Act provided that the laws in force prior to the Con- stitution of the State of Andhra in the territories included in it, were thereafter to continue in force there. The Madras General Sales Tax Act therefor(, became applicable to the State of Andhra and it became go applicable with the new s. 22 previously added to it. Subsequently, the Madras Act as applying in the State of Andhra was, to suit the latter State, adapted by substituting for the name Madras the name Andhra wherever it occurred in that Act. I will hereafter call this Act the Sales Tax Act.

Sometime in the year 1954 the respondent, the State of Andhra, issued notices to the petitioners demanding taxes under its Sales Tax Act. As I have earlier stated the petitioners challenged the right of the respondent to levy the tax and certain correspondence followed. As the respondent insisted on collecting the tax, the petitioners instituted the present proceeding,-, in July and August, 1955.

While these proceedings were pending, the question of the effect of Art. 286 again came up for consideration (1) [1953] S.C.R. 1069.

by this Court in the case of the Bengal Immunity Company Ltd. v. The State of Bihar(1). This Court by its judgment pronounced, again by a majority, on September 6, 1955, held that until Parliament by law made in the exercise of powers vested in it under Art. 286(2) otherwise provided, no State could impose any tax on a sale or purchase of goods when such sale or purchase took place in the course of inter- State trade or commerce and the majority decision in the State of Bombay v. The United Motors (India) Ltd. (2) in so far as it decided to the contrary could not be accepted andfurther that the explanation in Art. 286(1)(a)did not confer any right on the State in which the goods were delivered under a sale, to tax it notwithstanding that the property in the goods passed in another State. In view of this decision the respondent was advised that it could not oppose the petitions and on October 21, 1955, it actually filed statements in these proceedings submitting that the petitions might be allowed. Before however the petitions could be heard and disposed of, an Ordinance called the Sales Tax Laws Validation Ordinance, 1956, was promulgated by the President on January 30, 1956. This Ordinance was later, on March 21, 1956, replaced by the Sales Tax Laws Validation Act, 1956. Both these enactments were in identical terms. The operative provision of the

Validation Act is set out below.

2. " Notwithstanding any judgment, decree or order of any court no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of interstate trade or commerce ; and all such taxes levied or collected or purporting to have been levied or collected during the (1) [1955] 2 S.C.R. 603.

(2) [1953] S.C.R. 1069.

aforesaid period shall be deemed always to have been validly levied or collected in accordance with law. "

The respondent was advised that the Validation Act had changed the situation and in view of it the petitions could no longer succeed. Thereupon, the respondent on February 19, 1957, filed fresh statements submitting that the petitions should be dismissed. The petitions have now come up for hearing in these circumstances.

The validity of the Validation Act itself has been challenged. But I do not think it necessary to decide that question. I will assume that that Act is perfectly valid. It does not however itself levy any tax. Its only effect, so far as these cases are concerned, is to permit the Sales Tax Act to operate to tax sales which took place in the course of trade between Andhra and any other State between certain dates.I will not refer to these dates hereafter for what Ihave to say applies to sales between them only. As has been agreed between the parties, as mentioned at the commencement of this judgment, the only question that we have to decide is whether a sale under which the goods were delivered in Andhra for consumption there though property in them passed in Madras, can be taxed by the respondent. Such a sale would no doubt be a sale in the course of trade between Andhra and Madras. It is said that such a sale cannot be taxed by the respondent notwithstanding the Validation Act, because the Sales Tax Act does not- purport to tax it.

Does the Sales Tax Act then contain any provision taxing such a sale ? Now the Act authorises the levy of a tax on sales as defined in it. A sale is defined in s. 2(h) of the Act. It is not disputed however that that definition does not include a sale under which goods are delivered in Andhra for consumption there but property in them passes in Madras and no further reference to that section is therefore necessary. It is however said that the effect of the Explanation in s. 22 is to make such a sale, a sale within the meaning of the Act and therefore liable to be taxed under it. So I proceed to examine that section. Section 22 as it stood at the relevant time reads thus:

S.22. "Nothing contained in this Act shall be deemed to impose, or authorise the imposition of, a tax on the sale or purchase of any goods, where such' sale or purchase takes place

(a) (i) outside the State of Andhra, or

(ii) in the course of the import of the goods into the territory of India or of the export of the goods out of such territory, or

(b) except in so far as Parliament may by law otherwise provide, after the 31st day of March 1951 in the course of inter-State trade or commerce, and the provisions of this Act shall be read and construed accordingly.

Explanation.-For the purposes of clause (a)(i), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale or purchase passed in another State. "

Does the Explanation in this section then say that when under a sale goods are delivered in Andhra, the sale shall be deemed to have taken place there though the property in the goods may have passed in another State, for example, Madras ? It no doubt says, without specifying any particular State, that a sale shall be deemed to have taken place in the State in which the goods were delivered under it though the property in them has passed in another State. But it seems to me impossible from the language used to say that it contemplated a case in which the goods were delivered in Andhra though property in them passed in another State. For the sake of clarity I have left out in what I have just said the term as to consumption in the State in which the goods were delivered and no question as to such consumption is in dispute in these cases.

The Explanation opens with the words " For the purposes of clause (a) (i) ". What then is that clause ?

It only contains the words "outside the State of -Andhra".

It completes the sentence part of which has preceded it. The complete sentence says, Nothing in this Act shall be deemed to impose, or authorise the imposition of, a tax on the sale or purchase of any good,,;, where such sale or purchase takes place

(a) (i) outside the State of Andhra.

It then savs that no tax shall be levied under the Act on a sale which takes place outside Andhra. It is after this that the Explanation comes and starts with the words " for the purposes of clause (a) (i)".

These words must therefore mean, for the purpose of explaining which sale is to be regarded as having taken place outside Andhra. The Explanation then is for this purpose. I will now turn to the remaining and the substantive portion of the Explanation. That must explain when a sale is to be regarded as having taken place outside Andhra. The substantive portion of the Explanation however mentions a sale which is to be deemed to have taken place inside a State. Keeping its purpose in mind, it must be taken by saying that a certain sale is to be deemed inside a State, to say that it is outside the State of Andhra. It follows that the Explanation does not contemplate that the State inside which a sale is to be deemed to have taken place, can be the State of Andhra. That State cannot be the State of Andhra, for then the Explanation would not show when a sale is to be deemed to be outside Andhra and that by its language is the only purpose for which it is enacted. Therefore the Explanation can only be read as contemplating a State other than Andhra as the State inside which a sale shall be deemed to have taken place. This is the inevitable result produced by the opening words of the Explanation understood according to their plain meaning. So the Explanation, omitting portions of it for the sake of clarity, can only be read in the manner shown below:

> For the purposes of clause (a)(i) a sale or purchase shall be deemed to have taken place in the State being a State other than Andhra, in which the goods have been actually delivered notwithstanding that the property in the goods has passed in the State of Andhra. I therefore find it impossible to say that the Explanation states that a sale shall be deemed to have taken place inside Andhra if under it the goods have been delivered there though the property in them passed in another State. The Explanation does not hence, in my view, authorise the taxation of a sale under which goods are delivered in Andhra though property in them passed in Madras.
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> The view that I have taken of the purpose of the Explanation in s. 22 was taken of the purpose of the Explanation in Art. 286(1)(a) in the Bengal Immunity Company case (1). It was said at p. 646 of the report, " Here the avowed purpose of the Explanation is to explain what an outside sale referred to in sub-clause (a) is ". The language of the Explanations and the setting of each in its respective provision are identical. That language must therefore have the same meaning. It is said that the consideration that prevailed with the Court in the Bengal Immunity Company case (1) in dealing with Art. 286 cannot apply in dealing with s. 22 for the latter is a provision in a taxing statute which the former is not. But I do not see that this comment, even if justified, would lead to a different meaning being put on words used when they occur in a taxing statute from that when they occur in a statute which does not purport to levy a tax. As a matter of language only, words must have the same meaning. The words "for the purpose of clause (a)(i)"
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> must therefore have tile same meaning in the Explanation in Art. 286(1)(a) as in the Explanation in s. 22. 1 am unable to distinguish the present case from the Bengal Immunity Company case (1) for the purpose of determining the meaning of the words used.

It is then said that the Explanation in i. 22 has two facets; that when it talks of a sale inside one State, it at the same time necessarily talks of a sale outside all other States. Therefore it is said that when under a (1) [1955] 2 S.C.R. 603.

sale goods are delivered in Andhra but property in .them passes outside Andhra, the Explanation at the same time makes such a sale inside Andhra and outside all other States. I do not follow this. Why should the Explanation in this Andhra Act be concerned with saying when a sale shall be deemed to have taken place outside all other States ? Andhra cannot of course legislate for any other State. Nor is there anything in this Act which makes it necessary for the purposes of it to say when a sale shall be deemed to be outside all other States. It follows therefore that a construction cannot be put on the language used in tile Explanation which produces the result of showing a sale to be inside Andhra and so outside all other States. Further, as I have earlier pointed out, the words " For the purposes of clause (a)(i)" with which the Explanation starts, show conclusively that it is necessarily confined to a sale under which goods are delivered in a State other than Andhra and the property in the goods passes in Andhra. It is no objection to this reading of the Explanation to say that the Andhra Act would then be saying when a sale is to be deemed to have taken place inside another State and it has no power to do so as it can legislate only for itself and for no other State. Such an objection would be pointless because Andhra by saying that a sale shall be deemed to have taken place inside another State is only legislating for itself and only saying that such a sale is therefore an outside sale so far as it is concerned and cannot be taxed in view of s. 22(a) of its Act. It may be that it is possible in construing the Explanation in Art. 286(1)(a) to conceive of two facets because that dealt with all States or any two States at a time and for all these the Constitution was fully competent to lay down the law. That however is not possible when construing a law passed by a State legislature. Such law cannot regulate the laws of other States. And in this case the conception is further impossible because the language shows that the Explanation is for explaining when a sale is to be deemed to have taken place outside the State of Andhra. It is not meant to explain when it is deemed to have taken place outside any State whatsoever that State may be. I am therefore unable to see that the Explanation has any facet showing what would be a sale inside Andhra.

The conclusion that I reach is that the Sales Tax Act with which these cases are concerned does not authorise '.he taxing of a sale under which goods are delivered in Andhra but the property in them passes in Madras. In this view of the matter I do not think it necessary to discuss the various other grounds on which the respondent's right to tax these sales was also challenged.

In the result I would allow these petitions. BY COURT: In view of the opinion of the majority, the petitions an dismissed. The parties are to bear their own costs.

Petitions dismissed.