Assessing Authority-Cum-Excise & ... vs M/S. East India Cotton Mfg. Co. ... on 23 July, 1981

Equivalent citations: 1981 AIR 1610, 1982 SCR (1) 55, AIR 1981 SUPREME COURT 1610, 1981 TAX. L. R. 3044, 1981 SCC(TAX) 3 268, 1981 TAXATION 63 (9) - 1 (SC), 1981 UJ (SC) 688, (1981) 63 TAXATION 1, 1981 (3) SCC 531, (1981) 48 STC 239

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, A.P. Sen, E.S. Venkataramiah

PETITIONER:
ASSESSING AUTHORITY-CUM-EXCISE & TAXATION OFFICER, GURGAON &

Vs.

RESPONDENT:
M/S. EAST INDIA COTTON MFG. CO. LTD.FARIDABAD.

DATE OF JUDGMENT23/07/1981

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 1610 1982 SCR (1) 55
1981 SCC (3) 531 1981 SCALE (3)1067

ACT:
Central Sales Tax Act 1956, (74 of 1956) Ss. 8(1), (2), (3)(b), 10, 10-A,& Central Sales Tax (Registration and Turnover) Rules 1957, Rules 12, 13- Registered Dealer-Certificates of Registration-Manufacture and sale of textiles-Purchase of dyeing colours and other chemicals after issuing 'C' Forms-User of such goods for third parties on job contract basis-Whether such use amounts to manufacture.

Interpretation of Statutes-Taxing Statute-Statute to be construed according to plain language-Judicial paraphrase impermissible to Court.

Words & Phrases- "For use by him in the manufacture or processing of goods for sale "-Meaning of-Central Sales Tax Act, 1956,S. 8(3) (b).

HEADNOTE:

The Central Sales Tax Act 1956 and the Central Sales Tax (Registration, and Turnover) Rules 1957, provide that when a manufacturer who holds a Certificate of Registration under the Act buys goods for use by him in the manufacture of goods for sale he would be charged tax at the lower rate of 3% on his furnishing a declaration in Form C to the Seller.

The assessee carried on business of manufacturing and processing textiles. It was registered under the Punjab General Sales Tax Act, 1948 and held a Certificate of Registration under section 7 of the Central Sales Tax Act, 1956. The business mentioned in the Certificate of Registration was textile manufacturing, sale. purchase, wholesale distribution, sales and purchase of yarn waste and textile machinery; and also specified for the purpose of sub-section(l) of section 8, dyeing colours and other chemicals for use in manufacture. The assessee purchased these goods in the course of inter-state trade and commerce on the basis of its Certificate of Registration and furnished to the selling dealers declarations in Form C stating that these goods were purchased for use by the assessee in the manufacturing of goods for sale. On the strength of these declarations the selling dealers were taxed in respect of the sales effected by them to the assessee at the rate of 3 per cent under section 8(1) (b) of the Act.

The Excise and Taxation Officer-appellant issued a notice calling upon the assessee to show cause why action should not be taken under section 10 of the
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Central Act on the ground that the assessee had been misusing the Certificates of Registration by doing sizing, bleaching and dyeing for third parties on job basis. The assessee contended in reply that neither the term and conditions of the Certificate of Registration nor the provisions of section 8 (3) (b) of the Central Act required that the goods purchased by the assessee must be used by it in manufacture or processing of its own goods intended for sale by itself and that it would be sufficient compliance with the requirement of section 8 (3) (b) read with the Certificate of Registration even if the goods purchased were used by the assessee in manufacture or processing of goods for a third party under a job contract so long as the manufactured or processed goods were intended for sale by such third party. This contention was not accepted by the appellant who imposed the penalty under section 10A of the Act.

The assessee's writ petition to the High Court was dismissed holding that the goods purchased by the assessee

against its Certificate of Registration could be used by it only in manufacture of textiles intended for sale by itself and if the goods purchased were used in manufacture of textiles for a third party on the basis of a job contract, it would amount to user of the goods purchased for a purpose different from that specified in section 8 (3) (b) and the assessee would be liable to be proceeded against under section 10 and 10A.

The assessee's appeal before the Division Bench of the High Court was allowed which held that all that section 8(3) (b) provided was that the goods purchased must be used by assessee in manufacture of goods for sale and did not require that the sale must be by the assessee himself. The prescription of section 8 (3) (b) was that the goods manufactured must be for sale, without any qualifying expression that the sale must be by the assessee manufacturing the goods and therefore even if the goods were manufactured for a third party, so long as they were intended for sale by such third party, the case would be covered by the terms of the section.

Dismissing the appeal,

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HELD : 1 (i) The Division Bench of the High Court was right in holding that even if the assessee carried out the work of sizing, bleaching and dyeing of textiles for a third party on job contract basis, its case would be covered by the terms of the second sub-clause of section 8 (3) (b), provided that the textiles so sized, bleached and dyed by the assessee were intended for sale by such third party. [67 C]

(ii) If it is proved in any proceeding initiated under section 10(d) or section 10A that the textiles sized, bleached or dyed by the assessee for sale by such third party on job contract basis were not intended for sale by such third party as would be evident if such textiles were in fact not sold by the third party but were used for its own purposes, the assessee would incur the penalty prescribed in those sections. [67 D]

Commissioner of Sales Tax v. S.R. Sharma, 31 S.T.C, 480 : Navsari Cotton Mills Ltd. v. State of Gujarat 37 S.T.C. 104 & O. Parmasivan v. State of Kerala 1971 Tax L.R. 1241 overruled.

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2. It is a well-settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added nor subtracted unless there are adequate grounds to justify the inference that the legislature clearly so intended. [64E]

Thompson v. Gold and Co. [1910] A.C. 409: Vickers Sons and Maxim Ltd. v. Evans [1910] A.C. 444 referred to.

3(i) The legislature as also the rule making authority used the expression "for use.....in the manufacture.....of goods for sale" without indicating that the sale must be by

any particular individual. The legislature has designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods. Where the legislature wanted to restrict the sale to one by the registered dealer himself. the legislature used the qualifying words "by him" after the words "for resale" in the first sub-clause of section 8 (3) (b) indicating that the resale contemplated by that provision is resale by the registered dealer purchasing the goods and by no one else. While enacting the second sub-clause of section 8 (3) (b) the legislature did not qualify the words "for sale" by adding the words "by him". This deliberate omission of the words "by him" after the words "for sale" indicates that the legislature did not intend that the sale of the manufactured goods should be restricted to the registered dealer manufacturing the goods. [64 H-65 C]

(ii) The Court must construe the language of section 8 (3) (b) according to its plain words and it cannot write in the section words which are not there. To read the words "by him" after the words "for sale" in section 8 (3) (b) would not be construction but judicial paraphrase which is impermissible to the Court. [65 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 756 (NT) of 1973.

From the judgment and order dated the 28th March, 1972 of the Punjab & Haryana High Court in L.P.A. No. 581 of 1970 R.N. Sachdev and Miss A. Subhashini, for the Appellant. A.K. Sen, K.K. Jain, S.K. Gupta, Bishambar Lal and P. Dayal, for the Respondents.

The Judgment of the Court was delivered by BHAGWATI, J. This appeal by special leave raises a short but interesting question of construction of section 8 (3) (b) of the Central Sales Tax Act, 1956. The determination of this question has given rise to divergence of opinion amongst different High Courts but if we have regard to the well recognised canons of construc-

tion of taxing statues and also focus our attention on the object and intendment of the section, we do not think it presents much difficulty of solution. The facts giving rise to the appeal are few and may be briefly stated as follows.

The assessee is a limited company registered under the Companies Act, 1956 and having its registered office at Calcutta. The assessee owns a factory in Faridabad where it carries on business of manufacturing and processing textiles. The assessee is registered under the Punjab General Sales Tax Act, 1948 as in force in the State of Haryana and at material times it also held a Certificate of Registration under section 7 of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act). The business mentioned in the Certificate of Registration was Textile manufacturing, sale, purchase, wholesale distribution; sales and purchase of yarn and waste and textile machinery and

the Certificate of Registration also specified inter alia the following classes of goods for the purpose of sub-section (l) of section 8, namely, "dyeing colours, and other chemicals for use in manufacture." The assessee purchased these goods in the course of inter-state trade and commerce on the basis of its Certificate of Registration and furnished to the selling dealers declarations in Form C stating that these goods were purchased for use by the assessee in the manufacturing of goods for sale. On the strength of these declarations the selling dealers were taxed in respect of the sales effected by them to the assessee at the rate of 3 per cent under section 8 (1) (b) of the Central Act. The goods purchased by the assessee were used partly for sizing, bleaching and dyeing of textiles belonging to the assessee and partly for sizing, bleaching and dyeing of textiles belonging to third parties on job basis.

On 17th September 1966, the Excise and Taxation Officer, Gurgaon issued a notice calling upon the assessee to show cause why action should not be taken against it under section 10 of the Central Act on the ground that the assessee had been misusing the certificate of registration by doing sizing, bleaching and dyeing for third parties on job basis. This was followed by another notice dated 13th July 1967 in the same terms by the Excise and Taxation Officer in regard to the assessment years 1962-63 to 1966-

67. The assessee replied to the notices by its letter dated 21st July 1967 asking for details and circumstances in which, according to the Excise and Taxation Officer, the assessee had misused the certificate of registration so that the assessee could satisfy the Excise and Taxation Officer that no such misuse had, in fact, taken place. In response to this query made by the assessee, the Excise and Taxation Officer formulated the case against the assessee in the following words.

> "The company purchased goods from outside the State of Punjab (now Haryana) on submission of 'C' Forms for the purpose of use in manufacture of goods for sale. But instead of doing so, the company used those purchases partly in manufacturing its own goods for sale and partly for doing job work for other parties. The Company could not use the material concessionally purchased, for the job work as that does not constitute 'sale'."

The assessee contended in reply that neither the terms and conditions of the certificate of registration nor the provisions of section 8 (3) (b) of the Central Act required that the goods purchased by the assessee must be used by it in manufacture or processing of its own goods intended for sale by itself and that it would be sufficient compliance with the requirement of section 8 (3) (b) read with the Certificate of Registration even if the goods purchased were used by assessee in manufacture or processing of goods for a third party under a job contract, so long as the manufactured or processed goods were intended for sale by such third party. This contention was however not accepted by the Excise and Taxation Officer and he consequently issued notices to the assessee for the assessment year 1962- 63 to 1966-67 proposing to impose penalty under section 10A of the Central Act on the ground that the assessee had "contravened the provisions of section 10 of the Act ibid by purchasing goods for the purpose specified in clause (b) of subsection (3) of section 8" but had failed "without reasonable excuse to make use of the goods for any such purpose." The assessee thereupon filed a writ petition in the High Court of Punjab and Haryana for quashing and

setting aside the various notices issued by the Excise and Taxation Officer seeking to proceed against the assessee under sections 10 and 10A of the Central Act.

The writ petition came up for hearing before a single Judge of the High Court who rejected it on the ground that on a true interpretation of section 8 (3) (b), the goods purchased by the assessee against its certificate of registration could be used by it only in manufacture of textiles intended for sale by itself and if the goods purchased were used in manufacture of textiles for a third party on the basis of a job contract, it would amount to user of the goods purchased for a purpose different from that specified in section 8 (3) (b) and the assessee would be liable to be proceeded against under section 10 and 10A and in the circumstances the notices issued against the assessee must be held to be valid. The assessee preferred an appeal before a Division Bench of the High Court and before the Division Bench, two contentions were advanced on behalf of the Revenue in support of the decision of the learned single Judge. The first contention was that the sizing, bleaching and dyeing of textiles did not amount to manufacture of textiles and the goods purchased by the assessee could not therefore be said to have been used by it in manufacture of textiles as specified in the Certificate of Registration and hence the assessee had failed to make use of the goods purchased for the purpose specified in sec. 8 (3) (b) read with the Certificate of Registration. This contention was negatived by the Division Bench which held that though sizing bleaching and dyeing of grey cloth did amount to processing, it had the effect of converting grey cloth into a commercially different marketable commodity and it therefore amounted also to manufacture of a commercially new product and the user of the goods purchased in sizing, bleaching and dyeing grey cloth was consequently within the terms of section 8 (3) (b) read with the Certificate of Registration. This view taken by the Division Bench was not challenged on behalf of the Revenue in the appeal before us and hence we need not say anything more about it. The second contention urged before the Division Bench was-and that was the only contention pressed upon us on behalf of the Revenue-that the interpretation placed on section 8 (3) (b) by the learned single Judge was correct and in order to come within the terms of that section, the assessee was required to use the goods purchased in manufacture of its own goods intended for sale by itself and if the assessee used the goods purchased in manufacture of goods for a third party, the user would be for a purpose different from that specified in section 8 (3)

(b), even though the manufactured goods were intended for sale by such third party. The Division Bench did not accept this contention of the Revenue and over-turning the view taken by the learned single Judge, the Division Bench held that all that section 8 (3) (b) provided was that the goods purchased must be used by the assessee in manufacture of goods for sale and did not require that the sale must be by the assessee himself. The prescription of section 8 (3) (b) was that the goods manufactured must be for sale, without any qualifying expression that the sale must be by the assessee manufacturing the goods and therefore even if the goods were manufactured for a third party, so long as they were intended for sale by such third party, the case would be covered by the terms of the section. The Division Bench accordingly allowed the writ petition and quashed and set aside the notices issued against the assessee. The Revenue thereupon preferred the present appeal after obtaining certificate of fitness from the High Court.

It will be seen from the above statement of facts that the real controversy between the parties in the present appeal centres round the true interpretation of section 8 (3) (b). We will presently set out

that section but before we do so, it is necessary to refer to some other provisions of the Central Act as well, for it is a well-settled rule of interpretation that no one section should be construed in isolation but that the statute should be read as a whole with each part throwing light on the meaning of the other. Section 6 is the charging section and it levies Sales Tax on every dealer "on all sales effected by him in the course of inter state trade or commerce during any year." Section 8, as its marginal note indicates, provides the rates at which Sales Tax shall be chargeable on inter-state sales effected by a dealer. That section and we are setting out here the section as it stood at the material time provides inter alia as follows:

> "8(1)Every dealer, who in the course of Inter-State trade or commerce-
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> (a) sells to the Government any goods; or
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> (b) sell-to a registered dealer other than the Government goods of the description referred to in subsection (3), shall be liable to pay tax under this Act, which shall be three per cent of his turnover. (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-state trade or commerce not falling within sub-section (1).
>
> (a) In the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and
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> (b) in the case of goods, other than declared goods shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State whichever is higher;

and for the purpose of making any such calculation any such dealer, shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2-A) (3) The goods referred to in clause (b) of sub-section (1)-

(a) ... ...

(b) are goods of class or classes specified in the certificate of the registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority;

or

(b) if the goods are sold to the Government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

(5) ... ...

This section provides for three different rates of tax, one in subsection (1) clauses (a) and (b), another in sub- section (2) clause (a) and the third in sub-section (2) clause (b). The rate of tax provided in sub-section (1) clauses (a) and (b) is lower than that provided in clause

(a) or clause (b) of sub-section (2). We are concerned here with clause (b) of sub-section (1) since it is under that provision that the sales of dyeing colours and chemicals made to the assessee were charged to tax by the Sales Tax Authorities under the Central Act. Sub-section (1) clause

(b) applies to sales to a registered dealer other than the Government of "goods of the description referred to in sub- section (3)". Sub-section (3) specifies the goods referred to in sub-section (1) clause (b) and clause (b) of sub- section (3) describes these goods as being "goods of the class or classes specified in the Certificate of Registration of the registered dealer purchasing the goods as being intended.....for use by him in the manufacture.....of goods for sale.....'.Now the class of goods specified in the Certificate of Registration of the assessee in the present case was "dyeing colours and other chemicals intended for use in the manufacture of textiles for sale" and therefore on the assessee purchasing dyeing colour and other chemicals against its Certificate of Registration for use by it in manufacture of textiles for sale, the selling dealers were liable to pay tax on the sales at the lower rate of three per cent under clause (b) of sub-section (1), provided the assessee furnished declaration Form C to the selling dealers and the selling dealers submitted the same to the Prescribed Authority as required by sub-section (4) clause (a) and plainly and unquestionably the benefit of this lower rate of tax would enure to the assessee, since it is common knowledge that the incidence of Sales Tax is always passed on by the selling dealer to the purchaser. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules 1957 made by the Central Government in exercise of the power conferred under section 13 sub-section (1) provides that the declaration referred to in sub-section (4) clause (a) shall be in Form C and accordingly, declarations in Form C duly filled in and signed were supplied by the assessee to the selling dealers against the purchases of dyeing colours and chemicals and these declaration contained a certificate by the assessee that the goods purchased were for use in manufacture of goods for sale. Rule 13 also provides "that the goods referred to in clause (b) of sub-section (3) which a registered dealer may purchase shall be goods intended for use by him as raw materials, processing materials....stores.....in the manufacture.....of goods for sale." The assessee was therefore clearly bound to use the dyeing colours and other chemical purchased by it against its Certificate of Registration and the declarations in Form C in manufacture of textiles for sale. If the assessee failed without reasonable cause to do so and used the dyeing colours and other chemicals purchased by it for a different

purpose, then under section 10 clause

(d) the assessee would be liable to punishment with imprisonment or fine or both and under section 10 A subsection (1), the assessee would also incur liability to penalty in a sum not exceeding one-and-a half times, the tax which have been levied under sub-section (2) in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section.

The question which therefore arises for consideration is as to what is the scope and meaning of the expression "for use.....in the manufacture.....of goods for sale" occurring in section 8 (3) (b) and in the declaration in Form C and Rule 13. Does it mean that the goods manufactured by a registered dealer by using the goods purchased against his Certificate of Registration and the declaration in Form C must be intended for sale by him or does it also include a case where goods are manufactured by a registered dealer for the third party under a job contract and the manufactured goods are intended for sale by such third party ? Now it is a well settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added nor substracted unless there are adequate grounds to justify the inference that the legislature clearly so intended. It was said more than seven decades ago by Lord Mersey in Thompson v. Goold and Company [1910] A.C. 409;

> "It is a strong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity, it is a wrong thing to do."

Lord Loreborn L.C. also observed in Vickers, Sons and Maxim Limited v. Evans [1910] A.C. 444;

> "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

Now here we find that the expression used by the legislature as also the rule making authority is simpliciter "for use-in the manufacture-of goods for sale" without any addition of words indicating that the sale must be by any particular individual. The legislature has designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing goods. It is significant to note that where the legislature wanted to restrict the sale to one by the registered dealer himself, the legislature used the qualifying words "by him" after the words "for resale" in the first sub-clause of section 8 (3) (b) indicating clearly that the resale contemplated by that provision is resale by the registered dealer purchasing the goods and by no one else, but while enacting the second sub- clause of section 8 (3) (b) the legislature did not qualify the words "for sale" by adding the words "by him". This deliberate omission of the words "by him" after the words "for sale" clearly indicates that the legislature did not intend that the sale of the manufactured goods should be restricted to the registered dealer manufacturing the goods. If the legislature intended that the sale of the manufactured goods should be by the registered dealer manufacturing the goods and by no one else, there is no reason why the words "by him should have been omitted after the words "for sale" when the legislature considered it necessary to introduce those words after the words "for resale" in the first sub-clause of section 8 (3) (b). The omission of the words "by him" is clearly deliberate and intentional and it cannot be explained away on any

reasonable hypothesis except that the legislature did not intend that the sale should be limited to that by the registered dealer manufacturing the goods. The Court must construe the language of section 8 (3) (b) according to its plain words and it cannot write in the section words which are not there. To read the words "by him" after the words "for sale" in section 8 (3) (b) would not be construction but judicial paraphrase which is impermissible to the Court. It is also important to note that the word 'use' is followed by the words "by him" clearly indicating that the use of the goods purchased in the manufacture of goods for sale must be by the registered dealer himself but these words are significantly absent after the words "for sale", On a plain grammatical construction, these words govern and qualify only "use" and cannot be projected into the words "for sale". The goods purchased by the registered dealer must be used by him in the manufacture of goods which are intended for sale but such sale need not be by the registered dealer himself: it may be by any one.

Now ordinarily when the language of a statutory provision is plain and unambiguous, there is no need to resort to the object and purpose of the enactment because in such a case, the language best dealers the intention of the law-giver. But, even if we look at the object and intendment of section 8 (1) (b), read with section 8(3) (b), we reach the same conclusion. The object of providing a lower rate of tax under 8 (1) (b) for sales of goods described in section 8 (3) (b) clearly is that when goods are purchased by a registered dealer for being used by him in the manufacture or processing of goods which are intended for sale, the goods which are ultimately sold should not become unduly expensive to the consumer by addition of a high rate of sales tax on the purchase of goods which are used in the manufacture or processing of the goods ultimately sold. Now if this be the object of section 8 (1) (b) read with section 8 (3) (b) it should be immaterial whether the sale of the manufactured or processed goods is by the registered dealer manufacturing or processing goods or by another person for whom the goods are manufactured or processed by the registered dealer. The intendment of the statutory provision being that the cost of the manufactured or processed goods to the consumer should not be unduly enhanced by reason of higher rate of tax on the goods used in the manufactured or processing of the goods sold, it is obvious that if this intendment is to be fully effectuated, the benefit of the statutory provision should be available irrespective of whether the manufactured or processed goods are sold to the consumer by the registered dealer or by some one else who has got the same manufactured by the registered dealer. It was for this reason that the legislature deliberately omitted to add the words "by him" after the words "for sale" so as to make it clear that this sub clause of section 8 (3) (b) would apply even if the goods manufactured or processed by the registered dealer were intended for sale by some one else. The words "for sale" following upon the word 'goods' clearly indicate that the goods manufactured or processed by the registered dealer must be goods for sale or in other words, they must be goods intended for sale and it is immaterial whether they are intended for sale by the registered dealer himself or by anyone else. This sub clause of section 8 (3)

(b) would therefore clearly cover a case where a registered dealer manufactures or processes goods for a third party on a job contract and uses in the manufacture or processing of such goods, materials purchased by him against his Certificate of Registration and the declarations in Form C, so long as the manufactured or processed goods are intended for sale by such third party. It is of course, true that if proceedings are taken against the registered dealer under section 10 clause (d) or section 10A, the question would arise whether the goods manufactured or processed by the

registered dealer for a third party were intended for sale by such third party and that would have to be decided by the Court or the competent Authority according to the appropriate and relevant rules of evidence, but merely because some difficulty may arise in the determination of this question by reason of the third party coming into the picture that would be no ground for refusing to place on the language of section 8 (3) (b) the only construction which it can reasonably bear.

We are therefore of the view that the Division Bench of the High Court was right in holding that even if the assessee carried out the work of sizing, bleaching and dyeing of textiles for a third party on job contract basis, its case would be covered by the terms of the second sub- clause of section 8 (3) (b), provided that the textiles so sized, bleached and dyed by the assessee were intended for sale by such third party. If it is proved in any proceedings initiated under section 10 (d) or section 10A that the textiles sized, bleached or dyed by the assessee for a third party on job contract basis were not intended for sale by such third party, as would be evident if such textiles were in fact not sold by the third party but were used for its own purposes, the assessee would incur the penalty prescribed in those sections.

We find that there are three decisions of three different High Court which have taken a view different from the one taken by us. One is the decision of the Madhya Pradesh High Court in Commissioner of Sales Tax v. S. R. Sharma 31 Sales Tax Cases, 480, the other is the decision of the Gujarat High Court in Navsari Cotton Mills Limited v. State of Gujarat 37 Sales Tax Cases 104 and the third is the decision of the Kerala High Court in O. Parmasivan v. State of Kerala 1971 Taxation Law Reports 1241. These three decisions proceed on an erroneous interpretation of section 8 (3) (b) and must be deemed to be over ruled by the present decision.

We accordingly quash and set aside the notices which have been issued against the assessee on the basis that merely by using dyeing colours and other chemicals purchased by it in sizing bleaching and dyeing textiles for third parties on job contract basis, the assessee contravened the provisions of section 10 clause (d) and rendered itself liable to penalty udder section 10A. The appeal will in the circumstances stand dismissed with costs throughout.

N.V.K. Appeal dismissed