Rattan Lal & Co. & Anr vs The Assessing Authority & Anr on 29 October, 1968

Equivalent citations: 1970 AIR 1742, 1969 SCR (2) 544, AIR 1970 SUPREME COURT 1742

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.C. Shah, V. Ramaswami, K.S. Hegde, A.N. Grover

PETITIONER:
RATTAN LAL & CO. & ANR.

Vs.

RESPONDENT:
THE ASSESSING AUTHORITY & ANR.

DATE OF JUDGMENT:
29/10/1968

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
RAMASWAMI, V.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 1742 1969 SCR (2) 544
CITATOR INFO :
F 1972 SC1458 (32,37,38)
F 1974 SC1111 (7)
RF 1976 SC 769 (3)
D 1979 SC 435 (6)
R 1985 SC1041 (11)
F 1987 SC1922 (7,11,12,18)
RF 1990 SC 820 (17,25)

ACT:
Punjab General Sales Tax Act, 1948 as amended by Punjab Act 7 of 1967 and Haryana Act 14 of 1967, ss. 5, 11A--Fixation of stage of tax--Amendments if contravene s. 15 Central Sales Tax Act. 1955--If discriminatory--Constitution of India, Art. 304.

HEADNOTE:

In Bhawani Cotton Mills v. Stale of Punjab 119671 3 S C R 577 this Court struck down s. 5(1) second proviso and ss. 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948 as contravening s. 15 of the Central Sales Tax Act, 1955. because, neither the Punjab Act nor the rules made thereunder indicated, as required by the Central Act the stage at which tax was to be levied. After the formation of the new States of Punjab and Haryana, the Act was amended by the legislatures of the two States by Act 7 of 1967 and 14 of 1967 respectively. The amen,dments fixed it at the stage of sale or purchase of respectively, goods by the last dealer liable to pay tax. In a writ petition before this Court the petitioners contended that (i) the position had not altered at all even after the amendments and the liability to taxation at different stages still remained and therefore the Act con.tinned to be in conflict with the Central Sales Tax Act; (ii) the legislatures of the two States were not competent to amend retrospectively an act passed by the composite State; (iii) by leaving it free to the executive to impose the tax within the maximum fixed there was excessive delegation of legislative functions; (iv) there was discrimination in the new s. 11AA and the opportunity given to a dealer to ask for reassessment or to submit to the old assessment and (v) the Act discriminated between imported goods and local goods and therefore contravened the equality clause and Art. 30. of the Constitution.

HELD: Dismissing, the petition.

(1) The Act by specifying the stage its the last purchase or sale a dealer liable It) pay the tax makes the stage quite clear. The matter now in the hands of the dealer and he has to find out for himself whether he is liable to pay the tax or not. A dealer knows what he has done with his goods or is going to do with them. By providing that he need not include in his turnover any transaction except when he is the last dealer, the position is now made clear. [553 F. G]

(2) The competency of the Icgislatures of Punjab and Haryana to amend an Act passed the composite State cannot be questioned. After reorganisation the Act applied as an independent Act to each of the areas and is subject to the legislative competence of the legislature in that area. [556 B]

(3) There is no abdication of legislative funtions in favour of the administrative authoritv as the Central Act itself gives power to the legislature to choose a rate of tax at not more than 3% of the taxable turnover. The tax levied is well within that limit and therefore the legislature has chosen the maximum and has left it free to the

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authorities to impose the tax within that maximum regard being had to the requirements of revenue and the expenditure necessary for the State. [555 G]

(4) The opportunity given to a dealer in s. 11AA to ask for reassessment or to submit to the old assessment does not result in discrimination. This is open to every dealer and the intention is to give an opportunity to the dealer himself leaving it to his own will whether to ask for a refund or not. [555 E-F]

(5) When a taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced. Article 304 has no application. So long as the rate is the same Art. 304 is satisfied. In the instant case the tax is at the same rate and therefore tax can,not be said to be higher in the case of imported goods. When the rate is applied the resulting tax may be somewhat higher but that does not contravene the equality contemplated by Art. 304. [557 B. C]

State of Madras v.N.K. Natraja, Mudaliar, [1969] 1 S.C.R. referred to

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 133, 165, 169-172, 185, 218, 219, 227, 228, 230,239, 252, 253, 248 and 249 1968.

Petition under Art. 32 of the Constitution of India for the enforcement of the fundamental rights. S.V. Gupte, S.K. Mehta and K.L. Mehta, for the petitioners (in W.P. No. 133 of 1968).

C.D. Garg, S.K. Mehta and K.L. Mehta, for the petitioners (in W.P. No. 165 of 1968).

Harder Singh, for the petitioners (in W.Ps. Nos. 169 and 170 of 1968).

V.C. Mahajan, S.K. Mehta and K.L. Mehta, for the petitioners (in W.Ps. Nos. 171,172, 218, 219, 227, 228, 230, 239, 248, 249, 252 and 253 of 1968).

M.C. Chagla, A.N. Sinha and B.P. Jha, for the petitioners (in W.P. No. 185 of 1968).

Niren De, Solicitor-General, O.P. Malhotra and R.N. Sachthey, for the respondents (in W.P. Nos. 133 and 165 of 1968).

A nand Saroop, Advocate-General for the State of Haryana and R.N. Sachthey, for the respondents (in W.P. Nos. 218, 219, 227 & 228 of 1968).

O.P. Malhotra and R.N. Sachthey, for the respondents (in W.P. Nos. 169 to 172 of 1968).

R.N. Sachthey,, for the respondents (in W.P. Nos. 185, 230, 239, 248, 249, 252 and 253 of 1968).

B. Datta and P.C. Bharatari, for the interveners (in W.P. No. 165 of 1968).

The Judgment of the Court was delivered by Hidayatullah, C.J. These are 17 petitions challenging the validity of the Punjab General Sales Tax (Amendment and Validation) Act, 1967 (Act No. 7 of 1967) by the Punjab Legislature and the Punjab Sales Tax (Haryana Amendment and Validation)Act, 1967. Thirteen of these petitions challenge the Punjab Amendment Act and four challenge the Haryana Amendment Act.

The petitioners are firms or companies dealing in cotton or oil seeds. Their business is to purchase ginned and unginned cotton for manufacturing yarn and selling the said cotton also to registered and unregistered dealers both inside and outside the State. The petitioners of the second category purchase oil seeds for use in manufacture of edible oils. The surplus oil-seeds are sold to other dealers, registered or unregistered, inside and outside the State of Punjab. Both these commodities are essential commodities to which the Central Sales Tax Act applies. Certain provisions of these Amending Acts are challenged on the ground that they offend s. 15 of the Central Act and are also unconstitutional being in violation of Articles 14 and 19. The Punjab General Sales Tax Act was passed in 1948. It was amended from time to time. The Act as it stood on April 1, 1960, was challenged in Bhawani Cotton Mills Ltd. v. State of Punjab and anr.(1). On April 10, 1967 this Court by majority struck down certain portions of the Act on the ground that they were in conflict with the provision of s. 15 of the Central Act. On November 1, 1966 .the former State of Punjab bifurcated and the States of Punjab and Haryana came into existence. On December 29, 1967, the Punjab Legislature enacted Act 7 of 1967 amending the original Act, and the following day the President's Act intituled the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967 (Act No. 14 of 1967) was passed for Haryana. Both the Acts were preceded by Ordinances which they replaced. It is not necessary to refer to the Ordinances.

Section 15 of the Central Sales Tax Act, 1956 (54 of 1956) provided as follows:

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Every sales-tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :--
>
> (1) [1967] 3 S.C.R. 577.
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be leviable at more than one stage;
>
> (b) where a tax has been levied =under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-

State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

The section provides that in respect of declared goods the tax (sales or purchase) shall not exceed the prescribed limit and shall not be levied at more than one stage and shall be refunded to persons from whom it is collected if the goods are sold in the course of inter-state trade or commerce. The original Punjab General Sales Tax Act, 1948 was challenged before this Court in Bhawani Cotton Mills Ltd.'s case(1). The Act in defining the tax-able turnover in s. 5 (2) allowed certain deductions and one such deduction in cl. (vi) was:

> " ..... turnover during that period on the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India:
>
> Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction."

The original section, as it stood on April 1, 1960, read as follows:

> "5. Rate of tax.
>
> (1) Subject to the provisions of this Act, there shall be levied on the taxable turnover every year of a dealer a tax at such rates not exceeding four naye paise in a rupee as the State Government may by notification direct:
>
> Provided .. ..
>
> ... ...
>
> (1) [1967] 3 S.C.R. 577.

Provided ,further that the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods as defined in clause (c) of section 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage:

> Provided .....
>
> (2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom--
>
> (a) his turnover during that period on--
>
> (i) .....

(ii) sales to a registered dealer of goods declared by him in a prescribed form .....

(vi) the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer a declaration in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.

It was contended in that case that s. 2(ff), 5 (1) second proviso and 5(2)(a)(vi) were in conflict with section 15 of the Central Act. Bhawani Mills were dealers registered under the Punjab General Sales Tax Act, 1948 and for the assessment years 1960-61 1961-62 and 1962-63 the Mills denied their liability to the Central Sales Tax on the purchase of cotton in the accounting year. The scheme of the Act then in force put the tax on purchase of cotton (which was a declared commodity) 'at the rate of 2 naye paise in a rupee. By the second proviso to s. 5 (1) it was further provided that such tax shall not be levied on the purchase or sale of such goods at more than one stage. The word 'dealer' at that time was defined as follows:

Dealer means any person including a Department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab. irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of' any such person is not in the said State, 'dealer' includes the local manager or agent of such person in Punjab in respect of such business."

The provisions for taxing purchases of cotton were challenged on the ground that there was a possibility of the tax being levied at more than one stage, the provisions of the second proviso notwithstanding. The argument was summarized by our brother Vaidialingam thus:

"In this case, according to the appellant, it has to send quarterly returns, even during the accounting year and, as per s. 10(4) of the Act, it has to pay also tax. in accordance with the returns submitted by it for every quarter. In the returns that are being sent, the dealer will have to include all purchases of cotton, effected by him during the quarter for which the return is sent. There is no indication, either in the Act. or in the rules or ,the forms prescribed, as to whether the persons from whom the appellant purchased cotton, have paid tax or not. Section 15 of the Central Act is not restricted only to registered dealers. There will also be nothing to guide the appellant to know as to whether the goods, purchased by it, have 'been sold to it by its vendor within the period mentioned in cl.

(vi) of s. 5(2)(a) of the Act. Under those circumstances, there is always a possibility, or even a certainty, of more persons than one having paid tax or being made liable to pay tax in respect of the same goods at different stages. That is quite opposed to the provisions of s. 15 (a) of the Central Act. Even otherwise, it is pointed out that if a person has purchased cotton and sells it after the period provided for in s. 5 (2)(a) (vi), that party is liable to pay sales tax and would have also paid the same. Another purchaser from the said party will also be liable to pay tax. on the same commodity, if he sells the goods, after 'the period mentioned in cl. (vi). That is, two persons are made liable for payment of tax in respect of the same commodity. In other words the purchases of the same item of declared goods, by the persons indicated above, are made liable for tax, whereas under the Central Act. there can be only one levy and collection of tax at one stage, either on sale or on purchase."

Learned counsel in that case showed by way of contrast how the Madras, Mysore, Andhra Pradesh and U.P. had avoided such a consequence. In answer, it was pointed out by the State that since the tax was levied, whether on sale or purchase, at the very first transaction, the stage was fixed and that the dealer could always claim exemption under s. 5(2)(a)(vi) or a refund under s. 12 of the Act. This Court in its majority judgment did not consider that the second proviso to s. 5 (1) by its mere declaration prevented the levy of tax at more than one stage. The difficulty however, remained that the Act itself did not indicate the stage at which the tax was to be levied and because under s. 15(1) of the Central Act there could be no liability for payment of tax unless this stage was so stated in the Act or the rules thereunder. It was pointed out that a dealer would have to show in his return all purchases of cotton and pay the tax with his return. There was nothing which would have enabled the dealer to know whether the tax had already been paid by another dealer and to exclude from his return those transactions. The dealer could not take a chance as heavy penalties were provided. This was particularly so where the goods passed through an unregistered dealer's hands at an intermediate stage. In dealing with the latter part of the reasons this Court gave an example which may be quoted here:

> " .... if a dealer, 'A' sells the declared foods to 'B', six months after the close of the year (B being a registered dealer), A becomes liable to purchase tax. But, if B sells the identical declared goods, again, after the period mentioned in sub-el.-(vi), he will also be liable to pay purchase tax. That means, in respect of. the same item of declared goods, more than one person is made liable to pay tax and the tax is also levied at more than one stage. That is not permissible under s. 15(a) of the Central Act. If goods are resold to a nonregistered dealer, within the period, sub-el. (vi), will not help the original purchaser. We may also point out, at this stage, that sub-cl. (vi) of s. 5(2)(a), negatives the assumption that the normal rule, under the Act, in respect of declared goods, is to levy the tax on the first purchaser."

This Court then referred to s. 12 where there is a provision for refund which taken with rules 48-58 allowed for refund to be claimed, and found the provisions insufficient to get over the difficulty. This Court observed:

> "Even in the matter of obtaining refunds, there can be no controversy, that the appellant will have to place, before the officer concerned, particulars of transactions

> connected with the commodity, in question and also the basis on which it claims the relief. It will be absolutely difficult, if not impossible, for persons like the appellant, to collect materials in this behalf, because, there is no provision, contained either in the Act or the rules, on the basis of which it will be entitled to be supplied with all the material information, relevant, for sustaining a request for refund. If the Central Act makes it mandatory that the tax can be collected only at one stage, in our opinion, it is not enough for the State to say that a person, who is not liable to pay tax, must nevertheless, pay it in the first instance, and then claim refund, at a later stage. We may state that the question as to how far a party can ask for refund, without the order of assessment being set aside, by appropriate proceedings, is highly doubtful; because at the time when the actual order of assessment is passed, in certain eases, it may not be possible for a party to say whether he is entitled to exemption, or not, under sub-cl. (vi) of s. 5(2) of the Act. If a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency, of refund at a later stage, will not make the original levy valid; because, if particular sales or purchase are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax."

Relying upon the observations in .4. V. Fernandez v. State of Kerala (1) this Court concluded:

> " ..... the provisions contained in a statute with .respect to exemptions of tax or refund or rebate, on the one hand, must be distinguished from the total nonliability or non-imposition of tax, on the other. These observations, also, in our opinion, effectively provide an answer to the stand taken by the State, in this ease that s. 12 of the Act provides an adequate relief, by way of refund, even if tax is collected at an earlier stage."

The Amending Acts which are now challenged set about removing these difficulties. These amendments are again challenged on the same lines. It is convenient to take the two Amending Acts separately. First we shall take up for consideration the Punjab amendments. Here, we are concerned only with a few of the amendments made by the Amending Act 7 of 1967. Section 5 was amended retrospectively from different dates. In subsection (1), in the second proviso, the words "as defined in el. [1957] S.C.R, 837.

of s. 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase of sale of such goods at more than one stage" are now omitted. After the second proviso another proviso is introduced: In sub-s. 1 A, the words "in respect of such goods other than declared goods"

> are substituted retrospectively from 16th December, 1965 for the words "in respect of such goods.' After sub-s. (2) a new sub-section (3) from October 1,1958. We may now set out the 5th sub-section as it emerges from the amendment before we deal with the objections:

> "Section 5--Rate of tax (1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding six naye paise in a rupee as the State Government may by notification direct."

(2) In this Act the expression 'taxable turnover means that part of a dealer's gross turnover during any period which remains after deducting therefrom

(a) his turnover during that period on--

(i) . . . .

. . . .

(vi) the purchase of' goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India;

Provided that in the case of such sale to a registered dealer, a declaration, in the prescribed front and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.

(3) Notwithstanding anything contained in this Act-

(a) in respect of declared goods tax shall be levied at one stage and that stage shall be --

(i) in the case of goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay tax under this Act;

(ii) in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act;

(b) the taxable turnover of any dealer for any period shall not include his turnover during that period on any sale or purchase of declared goods at stage other than the stage referred to in subclause (i). or as the case may be, sub-clause (ii) of clause (a)."

In addition, a new section, s. 11 AA was added to the following effect:

> "11 AA. Review of certain assessments, etc. of tax on declared goods :--
>
> (1) Notwithstanding anything contained in this Act. the Assessing Authority shall (whether or not an application is made to him in this behalf), review all assessments and reassessments made before the commencement of the Punjab GeneraI Sales Tax Amendment and Validation Act, 1967, in respect of declared goods and make such order varying or revising the order previously made as may be necessary for bringing

the order previously made into conformity with the provisions of this Act as amended by the Punjab General Sales Tax (Amendment and Validation) Act.1967:

Provided that no proceeding for review shall be initiated without giving the dealer concerned a notice in writing of not less than thirty days.

(2) Any dealer on whom a notice is served under sub-section (1) may within thirty days from the date of receipt of such notice intimate in writing the assessing authority of his intention to abide by the assessment or reassessment sought to be reviewed and if he does so. the assessing authority shall not review such assessment or reassessment under this section.

(3) No order shall be made under this section against any dealer without giving such dealer a reasonable opportunity of being heard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary but subject to the provisions of the foregoing sub-

sections any assessment. reassessment. levy or collection of any tax in respect of declared goods made or purporting to have been made, and any' action or thing taken or done or purporting to have done in relation to such assessment. are-assessment. levy or collection under the provision of this Act before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1967, shall be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under this Act as amended by the Punjab General Sales Tax (Amendment and Validation)Act, 1967."

The argument is that the position has not altered at all even after the amendments and the liability to taxation at different stages remains still and the Act continues to be in conflict with the Central Act on the same reasons on which Bhawani Mills case(1) proceeded. It is argued that the amendments have been made retrospective but no machinery is provided to enable the dealer to discover that the goods had been taxed before and the single stage at which the tax is to be levied is still not clearly discernible. This is the main argument but there are many supplementary arguments which we shall notice later. For the present we confine our attention to the main point. The stage of tax is now stated in s. 5(3)(i) and (ii). In the case of sales-tax, the stage of tax is the sale of such goods by the last dealer liable to pay the tax and in the case of purchase tax the stage is purchase by the last dealer liable to pay the tax. It is also provided that the turnover of any dealer for any period shall not include his turnover during that period of any sale or purchase of declared goods at any other stage than the stage so mentioned.

It will be seen that the matter is now in the hands of the dealer. He has to find out for himself whether he is liable to pay the tax or not. A dealer knows what he has done with his goods or is going to do with them. If he knows that he is not the last dealer having parted with the goods to another dealer or he knows that he is going to use the goods or sell them to consumers, he knows when' he is

not liable to tax and when he is. Therefore, he will not include the transaction in his taxable turnover in the first case but include it in the second. Goods in the hands of a dealer are not taxed. They are only taxed on the last purchase or sales. This information is always possessed by a dealer and by providing that he need not include in his turnover any transaction except when he is the last dealer, the position is now clear.

It is contended that even so the dealer may not know that he is the last dealer and may make some mistake. The law does not take .into account the actions of persons who are negligent or mistaken but only of persons who act correctly, according to law. If the dealer is clear 'about his own position he is now quite able see whether he is the last purchaser liable to pay the tax or the last seller liable to pay the tax. The Act by Specifying the stage [1967] 3 S.C.R. 577.

as the last purchase or sale by a dealer liable to pay the tax makes the stage quite clear and by giving an option to him not to include such transactions in his return saves him from the liability to pay the tax till he is the dealer liable to pay the tax. In our opinion, therefore, the present provisions of the Act are quite clear and are quite sufficient to make the amended Act accord with the Central Act. The arguments noted in the earlier case of this Court do not therefore arise.

It will thus be seen that the present Act does not suffer from any of the defects from which the unamended Act had suffered. It is, however, contended that the Act has been made retrospective but no machinery is provided to discover if the declared goods were assessed to tax more than once. As we have already pointed out, the matter is within the ken of the dealer himself and it is ,for him to decide whether he would not claim the benefit of s. 11AA and ask for a refund or in future transactions delete the sales from his taxable turnover when he is not the last dealer liable to pay the tax. Therefore the retrospectivity of the Act does not make any difference. It is not contended before us that it was not within the competence of the Punjab Legislature to pass such an Act retrospectively. The defect pointed out is the self same defect which was noticed in Bhawani Mills case(1). But that defect no longer exists.

It is argued further that there is a discrimination between the two kinds of manufacturers. In the definition of 'dealer' in s. (2)(d) and in the proviso to s. 1 IAA it is submitted discrimination arises because of the opportunity given to a dealer to ask for reassessment or to submit to the old assessment. This is open to every dealer and the intention is to give ,an opportunity to the dealer himself leaving it to his own will whether to ask for a refund or not. This hardly can be said to create a discrimination.

Lastly it is contended that there is a delegated legislation in that the maximum has been provided without indication of the circumstances under which the tax is to be levied. This, it is said, creates unguided delegation to administrative authority, the function of the legislature. It is to be noticed that the Central Act itself gives power to the legislature to choose a rate of tax at not more than 3 per cent of the taxable turnover. The tax levied is well within that limit and therefore the legislature has chosen the maximum and has left it free to the authorities to impose the tax within that maximum regard being had to the requirements of revenue and the expenditure necessary for the State.

We may now deal with some arguments which are common both sets of cases before considering the case of the Haryana amendment. It is ,argued that the organisation of the State (1) [1967] 3 S.C.R. 577.

took place on November 1, 1966 and the amendment in some of its parts seeks to amend the original Act from a date anterior to this date. In other words, the legislature of one of the States seeks to amend a law passed by the composite State. This argument entirely misunderstands the position of the original Act after the reorganisation. That Act applied now as an independent Act to each of the areas and is subject to the legislative competence of the legislature in that area. The Act has been amended in the new States in relation to the area of that State and it is inconceivable that this could not be within the competence. If the argument were accepted then the Act would remain unamendable unless the composite State came into existence once more. The scheme of the States Reorganization Acts makes the laws applicable to the new areas until superseded, amended or altered by the appropriate legislature in the new States. This is what the legislature has done and there is nothing that can be said against such amendment. In regard to Haryana cases also the same arguments are urged. It is contended that the amended Act there also offends s. 15 for the reasons which we have given. Neither the amendment of s. 55 in this area nor the introduction of s. 11AA for refund offends against s. 15 of the Central Act or the equality clause of the Constitution. It is said that pending cases will always be reconsidered whether or not an application in that behalf is made but in the case of disposed of cases it depends upon the party to intimate in writing that he has no objection to the assessment or reassessment already made. If any objection can be taken it will 'be by those whose cases are pending and not by those whose cases have been closed. The option to submit to the assessment is open to every one alike and there is no discrimination if a party wants that his case need not be reconsidered. He has only to state that in writing and that would be the end of the matter. If he wants his case to be reconsidered then he can go before the Tribunal and get his case reconsidered.

It is also urged in this connection that there is a discrimination between the imported goods and local goods. . It is said that the discrimination is also between the first purchase in the case of imported goods and last sale in the case of local goods. Since the imported goods might be more expensive by reason of freight etc. or intermediary sales having taken place, it is said. that the burden of tax will be heavier and therefore this will offend against the equality clause and Art. 304 of the Constitution. In our opinion this argument is without any substance. The rate of tax same in every case. In State of Madras v.N.K. Nataraja Mudaliar(1). this Court stated that the essence of Arts. 301 and 303 is to enable the State by a law "to impose on goods imported (1) [1969] S.C.R. from other States or the Union territories any tax to which similar goods manufactured or produced in the State are subject, so, however as not to discriminate between goods so imported and goods so manufactured or produced." It was pointed out by this Court that "imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced,Art. 304 has no application". Here also the tax is at the same rate and therefore the tax cannot be said to be higher in the case of imported goods. It may be that when the rate is applied the resulting tax is somewhat higher but that does not offend against the equality contemplated by Art. 304. That is the

consequence of ad valorem tax being levied at a particular rate. So long as the rate is the same Art.304 is satisfied. Even in the case of local manufactures if their cost of production varies, the net tax collected will be more or less in some cases but that does not create any inequality because inequality is not the result of the tax but results from the cost of production of the goods or the 'cost of their importation. This ground, therefore, has also no substance. We do not think it necessary to set down here the provisions of the Haryana Amendment Act because they follow the scheme of the Punjab Amendment Act in substance and what we have said in regard to the Punjab Amending Act applies mutatis mutandis to Haryana Amendment Act also. In the result these petitions have no substance. They are dismissed with costs. One set of hearing fee.

Y.P. Petitions dismissed.
4Sup. C.I./69-3